

Under prior law, the legislative body was only required to state the general reason or reasons for the closed session either prior to or after holding the closed session and if desired, cite the statutory authority under which the session was being held.¹⁶ The test claim legislation now requires a brief general description of closed session items to be included on the agenda for the meeting.

Thus, the Commission finds that Government Code section 54954.2, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all “legislative bodies” defined in Government Code section 54952 to provide a brief general description of all items to be discussed in closed session on the agenda of the meeting.

Prior Disclosure Requirements

Under prior law, section 54957.7 only required a legislative body, prior to *or* after the closed session, to state the general reason for the closed session and to include the appropriate statutory authority, if desired. The test claim legislation amended this section to provide, in relevant part, as follows:

- (a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda.

The test claim legislation now requires all legislative bodies to disclose each item to be discussed in closed session prior to the start of the closed session.

Accordingly, the Commission finds that Government Code section 54957.7, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all “legislative bodies” as defined in Government Code section 54952 to disclose, prior to holding a closed session, each item to be discussed in closed session.

Subsequent Reporting Requirements

Subdivision (b) was added to section 54957.7 by the test claim legislation and provides as follows:

- (b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

¹⁶ Former Government Code section 54957.7.

Section 54957.1, subdivision (a) of the test claim legislation added an extensive list of items requiring the legislative body to publicly report, either orally or in writing,¹⁷ the actions and votes taken in closed session for the following items:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as specified below:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

¹⁷ Government Code section 54957.1(b) provides in relevant part the following:

"Reports that are required to be made pursuant to this section may be made orally or in writing."

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

Under prior law, the sole reporting requirement for closed sessions under section 54957.1 was to report at the current or a subsequent meeting, any action taken and any roll call vote *to appoint, employ, or dismiss a public employee*.¹⁸ Other issues that could be discussed in closed session such as licensing matters, real estate negotiations or pending litigation did not require any reporting in a public session.¹⁹ The test claim legislation now requires the legislative body to reconvene into public, open session and report the actions and votes taken on the five new items listed above which were discussed in closed session.

Therefore, the Commission finds that Government Code sections 54957.7, subdivision (b), and 54957.1, subdivision (a), of the test claim legislation constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative bodies" in Government Code section 54952 to reconvene in public session prior to adjournment and report the five items identified in section 54957.1, subdivision (a) (1-4, 6) which were discussed in closed session.

Documentation Requirements

Subdivisions (b) and (c) of section 54957.1 of the test claim legislation concern the provision of documentation from closed sessions to members of the public. This section provides, in relevant part, as follows:

¹⁸ Former section 54957.1 stated the following:

"The legislative body of any local agency shall publicly report at the public meeting during which the closed session is held or at its next public meeting any action taken, and any roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the legislative body."

¹⁹ Government Code sections 54956.7, 54956.8, 54956.9, 54957.

(b)...The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendment for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the actions referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

Prior to the test claim legislation, section 54957.1 did not address writings. The subject of 'writings' was addressed in section 54957.5 which provided for the inspection and distribution of certain writings that were public records under the California Public Records Act. However, subdivision (e) of section 54957.5 provided that, "(T)his section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a legislative body of a local agency...". Thus, while prior law provided for the inspection and provision of certain writings distributed to the legislative body, it did not require the distribution of documentation from closed sessions to members of the public.

Accordingly, the Commission finds that Government Code section 54957.1, subdivisions (b) and (c), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative bodies" in Government Code section 54952 to provide copies of documentation from the closed session within the specified timelines.

Issue 2: Does the test claim legislation impose costs mandated by the state pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514?

The remaining issue is whether there are increased costs mandated by the state. Government Code section 17514 provides in relevant part the following:

Costs mandated by the state" means any *increased costs* which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975...which mandates a new program or higher

level of service within the meaning of Section 6 of Article XIII B of the California Constitution. (Emphasis added.)

In addition, section 17556 provides in relevant part the following:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

- (a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

At the May 24, 2001 hearing, the Department of Finance contended that local agencies requested the enactment of the test claim legislation and, thus, there are no costs mandated by the state. Mr. Cedrik Zemitis testified on behalf of the Department of Finance as follows:

MR. ZEMITIS: Second, local request, we would note that at the time the test claim statute was considered by the legislature, it was clear that these bills were introduced at the behest of local governments. The author of most of the bills stated for the record at the time that existing law was amended specifically at the request of local agencies. Indeed, numerous legislative committee analyses support the author.

In addition, the California School Boards Association at the time stated that clarification of the existing Brown Act will not create additional costs to local government. In addition, the California State Association of Counties and numerous other local entities all officially supported the legislation because it would simplify and clarify the Brown Act with no additional costs.

While we do not have resolutions from all of the affected local entities, which would be in the thousands literally, representatives of those entities clearly sponsored the legislation as well as reported savings and no new costs. Therefore we believe any mandate would not be reimbursable.²⁰

In response, the claimant testified that the City of Newport Beach did not request legislative authority to implement the program nor did they sponsor the test claim legislation.²¹ In

²⁰ Hearing Transcript, May 24, 2001 Commission on State Mandates Hearing, page 14, line 25; page 15, lines 1-25; page 16, lines 1-7.

²¹ Hearing Transcript, May 24, 2001 Commission on State Mandates Hearing, page 29, lines 15-21.

addition, there is no evidence in the record of a resolution from any governing body of a local agency requesting authorization to implement the test claim legislation. Therefore, the Commission finds that Government Code section 17556, subdivision (a) does not apply in this test claim.

Further, section 17556, subdivision (e) provides that the commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

The Department of Finance contends that while chapters 1136 and 1137 may have resulted in reimbursable state-mandated activities pertaining to certain notification requirements, these chapters may also result in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. The Department also contends that the test claim legislation results in cost savings to local governments by simplifying and clarifying the Brown Act. The Department did not comment on the new closed session requirements of the test claim legislation.

The original claimant, the County of Santa Clara, submitted a declaration to support their contention that the test claim legislation resulted in an increase in costs incurred by several County departments. Steve Conrad, SB 90 Coordinator for the County of Santa Clara declared on December 28, 1994 that an additional \$560 will be incurred per year by Santa Clara county to include closed session items on the agenda, and that an additional \$2,200 will be incurred per year by Santa Clara county to record closed session discussions in order to report in open session the items discussed in closed session, and that an additional \$6,300 will be incurred per year by Santa Clara county to prepare and post an agenda for the new bodies defined as "legislative bodies" in the test claim legislation.

In reviewing the language of the test claim legislation, there is no language that provides for offsetting savings resulting in *no* net costs to the claimants, nor does the test claim legislation include any additional revenue specifically intended to fund the mandate. While the Department of Finance contends that the test claim statutes may result in offsetting savings to the claimants by limiting the agenda descriptions to "20 words or less", the Commission finds that the language of the test claim legislation does not support this conclusion. Nor has the Department provided any documentary evidence to support their contention. Former Senator Kopp contends that the legislative intent of these amendments was to simplify and clarify the Brown Act. However, no documentary evidence has been provided to support this contention. Thus, the Commission finds that Government Code section 17556, subdivision (e) does not apply in this test claim.

Therefore, the Commission finds that the test claim legislation, which requires the legislative bodies of local agencies to perform a number of additional activities in relation to the open meeting requirements of the Brown Act, imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

CONCLUSION

Based on the foregoing, the Commission concludes that the test claim legislation (Government Code sections 54952, 54954.2, 54957.1, and 54957.7) imposes a reimbursable state-mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

Open Session Requirements

<u>Activity</u>	<u>Applies To</u>
To prepare and post an agenda at least 72 hours before a regular meeting containing a brief general description of each item of business to be transacted or discussed at the meeting. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	Local Bodies created by state or federal statute. Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action. Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Closed Session Requirements

<u>Activity</u>	<u>Applies To</u>
To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	All "legislative bodies"
To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. [Gov. Code § 54957.7, subd. (a)]	All "legislative bodies"
To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). [Gov. Code § 54957.7, subd. (b)]	All "legislative bodies"
To provide copies of closed session documents as required. [Gov. Code § 54957.1, Subd. (b) and (c)]	All "legislative bodies"

The Commission further concludes that all other statutes and code sections included in this test claim do not constitute a reimbursable state-mandated program.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95814.

June 29, 2001, I served the:

Adopted Statement of Decision

Brown Act Reform, CSM 4469

City of Newport Beach, Claimant

Government Code Sections 54952, 54954.2, 54957.1, and 54957.7

Statutes of 1993, Chapters 1136, 1137 & 1138

Statutes of 1994, Chapter 32

by placing a true copy thereof in an envelope addressed to:

Mr. Glen Everroad, Revenue Manager
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658

Mr. Glen Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 25, 2000, at Sacramento, California.


VICTORIA SORIANO

Commission on State Mandates

List Date: 03/16/2001

Mailing Information

Mailing List

Claim Number CSM-4469 **Claimant** City of Newport Beach

54952, 54954.2, 54957.1, and 54957.7
Subject 1136/93, 1137/93, 1138/93, 32/94
Issue Brown Act Reform

Mr. Paul Abelson, Interested person
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Martinez CA 94553

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Dr. Carol Berg, Ph. D,
Education Mandated Cost Network

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Mr. Bruce Brugmann,
Bay Guardian

520 Hampshire
San Francisco CA 94110

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Mr. Ginny Brummels (B-8), Acting Section Manager
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3301 C Street Suite 500
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Long Beach CA 90810-1839

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Claim Number

CSM-4469

Claimant

City of Newport Beach

54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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City of Scotts Valley

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Mr. James Erickson, City Administrator

City of Milbrae

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Ms. Pam Erlandson, Revenue Office

City of Monterey

Finance

City Hall

Monterey CA 93940

Tel:

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Claim Number

CSM-4469

Claimant

City of Newport Beach

54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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City of Newport Beach

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Claim Number

CSM-4469

Claimant

City of Newport Beach

54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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Claim Number

CSM-4469

Claimant

City of Newport Beach

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Subject

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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Claim Number

CSM-4469

Claimant

City of Newport Beach

54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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Interested Person

COMMISSION ON STATE MANDATES

NOTICE AND AGENDA¹

State Capitol, Room 126
Sacramento, California

March 28, 2002

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 February 28, 2002

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Item 2.

PROPOSED STATEMENT OF DECISION – TEST CLAIMS

Item 2 * *Community College District Budget and Financial Reports, Fiscal Management Reports, and Financial and Compliance Audits*
97-TC-10, 11, 12, Santa Monica Community College District, Claimant
Education Code Sections 84030, 84040 and 84040.5
Statutes of 1977, Chapters 36 and 936; Statutes of 1978, Chapter 207;
Statutes of 1979, Chapter 221; Statutes of 1980, Chapter 884; Statutes of
1981, Chapters 470, 471, 930 and 1178; Statutes of 1983, Chapter 1206;
Statutes of 1984, Chapters 609 and 1282; Statutes of 1986, Chapter 1486;
Statutes of 1987, Chapter 1025; Statutes of 1990, Chapter 1372; Statutes of
1994, Chapter 20; California Code of Regulations, Title 5, Sections 58300-
58301, 58303- 58308, 58310-58312, 58314, 58316, 58318, 59100, 59102,
59104, 59106, 59108, 59110, 59112, and 59114

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 3 *Brown Act Reform, CSM 4469*
City of Newport Beach, Claimant
Statutes of 1993, Chapter 1136; Statutes of 1993, Chapter 1137; Statutes of
1993, Chapter 1138; Statutes of 1994, Chapter 32 and Consolidation with
Open Meetings Act, CSM 4257, Statutes of 1986, Chapter 641

¹ This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

- Item 4* *Sex Offenders: Disclosure by Law Enforcement Officers*, 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909; Statutes of 1997, Chapters 17, 80,
817, 818, 819, 820, 821 and 822; Statutes of 1998, Chapters 485, 550, 927,
928, 929 and 930

B. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

- Item 5 *Handicapped & Disabled Students*, 00-PGA-03 & 00-PGA-04
County of Los Angeles and County of Stanislaus, Claimants
Statutes of 1984, Chapter 1747; Statutes of 1985, Chapter 1274;
Sections 60000-60020, Title 2, California Code of Regulations, Division 9

VI. EXECUTIVE DIRECTOR'S REPORT (info)

- Item 6 Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number BS055882 in the Superior Court of the State of California, County of Los Angeles.
CSM Case No. 01-L-01 [*San Bernardino MIA*]
2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.
CSM Case No. 01-L-13 [*Pupil Expulsions*]
3. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
CSM Case No. 01-L-04 [*Physical Performance Tests*]
4. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Appellate Court of California, Third Appellate District.
CSM Case No. 01-L-11 [*School Site Councils*]
5. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of California, Fourth Appellate District.
CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]

6. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 01-L-07 [*Domestic Violence*]
7. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 01-L-08 [*SEMS*]
8. *County of San Bernardino v. Commission on State Mandates of the State of California et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles. Case No. 01-L-10 [*Property Tax Administration*]
9. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, County of San Diego, Fourth Appellate District. Case No. 01-L-16 [*San Diego MIA*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action on report from the Personnel Sub-Committee

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

For information, contact:

Paula Higashi, Executive Director
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
(916) 445-0278 Fax

WORKSHOP

DEVELOPMENT OF REGULATIONS TO IMPLEMENT AB 1679

(Statutes of 1999, Chapter 643)

MARCH 28, 2002

1:30 to 2:30 P.M.

COMMISSION ON STATE MANDATES

CONFERENCE ROOM

980 NINTH STREET, SUITE 300

SACRAMENTO

Materials. Materials will be posted on the Commission website at <http://www.csm.ca.gov> by March 25, 2002. For information, contact Shirley Opie, Assistant Executive Director, at (916) 323-3562.

Special Accommodations. If you need special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodation, please contact the Commission Office at least five *working* days before the workshop.

ITEM 3

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137, and 1138

Open Meetings Act/Brown Act Reform

Table of Contents

Executive Summary/Staff Analysis	1
Claimant's Proposed Parameters and Guidelines, as Modified by Staff	13
<u>Attachment A</u>	
Claimant's Proposed Parameters and Guidelines, as Modified by Staff, without track changes	27
Exhibit A	
Adopted Statement of Decision	39
Exhibit B	
Claimant's Proposed Parameters and Guidelines	71
Exhibit C	
Department of Finance (DOF) Comments	83
Exhibit D	
Claimant's Response to DOF Comments	87
Exhibit E	
Mr. Paul C. Minney, on behalf of Mandated Cost Systems, Inc. (MCS), interested party, Response to DOF Comments	93
Exhibit F	
State Controller's Office Comments	103
Exhibit G	
Five Declarations in Support of Claimant's Request to Include Training as a Reimbursable Activity	113

ITEM 3

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641
Statutes of 1993, Chapters 1136, 1137, and 1138

Open Meetings Act/Brown Act Reform

EXECUTIVE SUMMARY

The *Brown Act Reform* test claim legislation requires that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act. The Commission on State Mandates (Commission) previously adopted two test claims on the Brown Act: the *Open Meetings Act* test claim (CSM-4257), and *School Site Councils and Brown Act Reform* test claim (CSM-4501).

In its Statement of Decision on the *Brown Act Reform* test claim (CSM-4469), adopted on June 28, 2001, the Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, and also required all "legislative bodies" to perform a number of additional activities in relation to the closed session requirements of the Brown Act.

Staff Analysis

The claimant submitted its proposed parameters and guidelines on July 26, 2001. Comments on the claimant's proposal were received from the Department of Finance (DOF), dated August 17, 2001, and the State Controller's Office (SCO), dated February 8, 2002. The claimant responded to DOF's comments on September 13, 2001, and Mr. Paul C. Minney, on behalf of Mandated Cost Systems, Inc. (MCS), an interested party, also submitted a response dated October 15, 2001. On January 23, 2002, the Commission conducted a pre-hearing conference to discuss the reimbursable activities. Following this pre-hearing, the claimant submitted five declarations to support its request that training be included as a reimbursable activity.

Staff reviewed the claimant's proposal and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

The provisions of the proposed parameters and guidelines and substantive changes made by staff are summarized below:

1. Eligible claimants that incurred increased costs for preparing and posting an agenda, including closed session items, for the new types of legislative bodies added by Brown Act Reform, can claim reimbursement beginning January 1, 1994, which is the effective date of the test claim statutes.
2. In addition to the requirement that the agenda include a description of the items that will be discussed in closed session, the *Brown Act Reform* requires all legislative bodies to disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session; to reconvene in open session prior to adjournment and report the actions and votes taken in closed session; and to provide copies of closed session documents. Eligible claimants that incurred increased costs to comply with the closed session requirements of *Brown Act Reform* can claim reimbursement beginning January 1, 1994.
3. Beginning with the annual reimbursement claims filed for 2001-2002 fiscal year costs, all claimants will claim costs for all reimbursable activities for *Open Meetings Act* and *Brown Act Reform* under these Parameters and Guidelines. Until that time, reimbursement for *Open Meetings Act*, must be claimed under that program as prescribed in the State Controller's claiming instructions.
4. Eligible claimants will have three options for claiming reimbursement for the cost of preparing and posting an agenda, including closed session items: 1) actual time, 2) standard time (set amount per agenda item that is based on the type of claimant), or 3) a flat rate per meeting. The basis for the standard times and the flat rate were established in amendments to Open Meetings Act Parameters and Guidelines adopted by the Commission on November 30, 2000. Only one reimbursement option can be selected for each type of meeting during a fiscal year, for claiming costs incurred for agenda preparation and posting, including closed session items.
5. In addition, the claimant proposed that all time of the trainer and legislative members is reimbursable, as well as all time for preparation of materials, for training on the new requirements of Brown Act Reform. Based on the evidence in the record, staff included ongoing training as a reimbursable activity because it constitutes a reasonable method of complying with the mandated activities. However, it is limited to the members of only those legislative bodies that actually hold closed sessions. Further, if the training encompasses more subjects than the activities related to closed session requirements, only the pro rata portion of the training is reimbursable.
6. Eligible claimants must claim actual costs incurred for subsequent reporting of actions taken in closed session, providing copies of documents approved or adopted in closed session, and training, regardless of the reimbursement option they chose to claim costs for agenda preparation and posting.

On February 27, 2002, the Commission conducted a workshop for parties to meet and discuss parameters and guidelines boilerplate language for local agencies, which includes sections V through IX, and the preamble to section IV. For purposes of consistency, staff modified

sections VII through IX, and the preamble to section IV, to match the boilerplate language in the *Sex Offenders: Disclosure by Law Enforcement Officers* Parameters and Guidelines set for the March 28, 2002 Commission hearing.

Boilerplate modifications were also made for sections V. Claim Preparation and Submission, and VI. Supporting Data. However, these sections do not match standard boilerplate language because of the reimbursement options.

Staff Recommendation

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by Commission staff, beginning on page 13.¹

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

¹ See also Attachment A, Claimant's Proposed Parameters and Guidelines, as Modified by Commission Staff, without track changes.

Claimant

City of Newport Beach

Chronology

06/28/01 Commission on State Mandates (Commission) adopted Statement of Decision²
07/26/01 Claimant submitted proposed parameters and guidelines³
08/17/01 The Department of Finance (DOF) submitted comments⁴
09/13/01 Claimant submitted response to DOF's comments⁵
10/15/01 Mr. Paul C. Minney, on behalf of Mandated Cost Systems, Inc. (MCS),
interested party, submitted comments⁶
01/23/02 Commission conducted a pre-hearing conference to discuss the reimbursable
activities
02/08/02 The State Controller's Office (SCO) submitted comments⁷
02/13/02 Claimant submitted four declarations to support its request that training be
included as a reimbursable activity⁸
02/27/02 Commission conducted a boilerplate language workshop
03/01/02 Claimant submitted an additional declaration supporting its request that training
be included as a reimbursable activity⁹
03/18/02 Commission issued staff analysis

Summary of the Mandate

Government Code sections 54952, 54954.2, 54957.1 and 54957.7, require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act.

On June 28, 2001, the Commission adopted its Statement of Decision on the *Brown Act Reform* (CSM-4469) test claim. The Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

² Exhibit A

³ Exhibit B

⁴ Exhibit C

⁵ Exhibit D

⁶ Exhibit E

⁷ Exhibit F

⁸ Exhibit G

⁹ Exhibit G

The test claim legislation expanded the types of “legislative bodies” required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, to include:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

It also required all “legislative bodies” to perform a number of additional activities in relation to the closed session requirements of the Brown Act, as follows:

- To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Gov. Code, § 54954.2, subd. (a).)
- To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
- To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). (Gov. Code, § 54957.7, subd. (b).)
- To provide copies of closed session documents as required. (Gov. Code, § 54957.1, subd. (b) and (c).)

The Commission previously adopted two test claims on the Brown Act:

Open Meetings Act

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim (CSM-4257). Statutes of 1986, chapter 641, added Government Code section 54954.2 to require that the legislative body of the local agency, or its designee, post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting in a location freely accessible to the public. The following types of “legislative bodies” were eligible for reimbursement:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body that exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.

Statutes of 1986, chapter 641 also added Government Code section 54954.3 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

School Site Councils and Brown Act Reform

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim (CSM-4501). This test claim was based on Government Code section 54954 and Education Code section 35147, which addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts. On March 29, 2001, the Commission adopted the parameters and guidelines for this mandate.

Staff Analysis

Staff reviewed the claimant's proposal and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive modifications were made to the claimant's proposed parameters and guidelines, as discussed below:

Heading

Under these proposed parameters and guidelines, eligible claimants would submit combined annual reimbursement claims for *Brown Act Reform* and *Open Meetings Act* beginning fiscal year 2001-2002. Thus, all of the legislative bodies identified as eligible claimants can claim reimbursement for all of the reimbursable activities identified in section IV of the parameters and guidelines, except as limited for training. Therefore, "Open Meetings Act" was included in the title and Statutes of 1986, chapter 641, and Government Code section 54954.3 with the test claim legislation.¹⁰

Further, the test claim submitted by the claimant stated: "The provisions of Chapter 32, Statutes of 1994, did not effect the scope of the state mandated activities and costs described in this test claim." The DOF contended that it was essentially clean-up legislation and it did not impose any reimbursable state-mandated costs. The Commission found that Statutes of 1994, chapter 32 did not impose a reimbursable state mandated program. Accordingly, the reference was deleted.

II. Eligible Claimants

The claimant's proposal includes counties, cities, a city and county, and special districts, as defined in Government Code section 17518, as eligible claimants. The SCO and MCS maintained that school districts are also eligible claimants for two reasons: 1) The *Open Meetings Act* Parameters and Guidelines recognized school districts as eligible claimants, and 2) the Statement of Decision for *Brown Act Reform* included school districts in its definition of a local agency.

¹⁰ Government Code sections 17530 and 17553.

Specifically, the Statement of Decision states:

As used in the Ralph M. Brown Act, "local agency" means a county, city, whether general law or chartered, city and county, town, *school district*, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency. (Gov. Code, §54951.) (Emphasis added.)¹⁰

Accordingly, this section was modified to include school districts as eligible claimants.

Staff clarified that commencing with the annual claims filed for costs incurred in the 2001-2002 fiscal year, all "legislative bodies" are eligible to claim reimbursement for all of the identified reimbursable activities, except as limited for training.

III. Period of Reimbursement

The claimant filed the test claim for the *Brown Act Reform* on December 29, 1994. Thus, the claimant's proposal identifies a reimbursement period beginning on or after July 1, 1993. However, Statutes of 1993, chapters 1136, 1137, and 1138, became effective January 1, 1994. Therefore, costs incurred on or after January 1, 1994, for compliance with the *Brown Act Reform* are reimbursable.

In addition, as suggested by the SCO, staff clarified that costs incurred for the *Open Meetings Act* program must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively. Annual claims, commencing with the 2001-2002 fiscal year, should include all costs for Open Meetings Act and Brown Act Reform.¹¹

IV. Reimbursable Activities

The claimant's proposal included two subsections: A) Scope of the Mandate, and B) Reimbursable Activities. The "Scope of the Mandate" summarized the reimbursable activities. This subsection was deleted because it was repetitive.

The following substantive modifications were made to the reimbursable activities section:

- The claimant proposed five reimbursable activities. The SCO suggested separating the activities required by the Open Meetings Act from those required by the Brown Act Reform. However, all of the proposed activities are required by the Brown Act Reform. Instead, the "Open Session Activities" were separated from the "Closed Session Activities." Also, staff specified the types of "legislative bodies" that are eligible to claim reimbursement for the increased costs to prepare and post an agenda pursuant to Government Code sections 54954.2 and 54954.3, and for the increased costs of subsequent reporting requirements and providing copies of documents approved or adopted in closed session pursuant to Government Code sections 54957.1 and 54957.7.

¹⁰ Exhibit A, footnote 1 on bates page 42.

¹¹ The Parameters and Guidelines for School Site Councils and Brown Act Reform (CSM-4501) are not included in these Parameters and Guidelines.

- Consistent with the Statement of Decision, “Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session,” was added as a closed session activity pursuant to Government Code section 54957.7, subdivision (a).
- The claimant proposed, “Increased costs to include subsequent reporting requirements of action taken in closed session...” This was followed by six subsequent reporting requirements. The DOF argued that this activity was not identified in the Statement of Decision and should therefore be deleted. In its response to the DOF’s comments, the claimant maintained that the Commission’s Statement of Decision recognized the requirements to “report out” certain actions taken in closed session. At the January 23, 2002 pre-hearing conference, DOF agreed that these activities were consistent with the Statement of Decision.

Consistent with statutory language, staff modified the claimant’s proposal as follows: “Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows:.”

- The claimant proposed the following item as a subsequent reporting requirement: “Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session as set forth in Section 54957.” The SCO recommended that this item be deleted since the Statement of Decision specifically determined this to be required under prior law. MCS supported this position. Therefore, this item was deleted to be consistent with the Statement of Decision.

- The claimant also proposed training as follows:

Training to the new members of the legislative body on the new requirements of *Brown Act Reform*, as well as training to all new members of the legislative body on the requirements of the Brown Act prior to or upon attaining office. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, all time of the trainer and legislative members is reimbursable. Additionally, all time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

The DOF asserted that training should be deleted because it is not identified as a reimbursable activity in the Statement of Decision. MCS acknowledges that the Statement of Decision does not specifically provide for reimbursement related to training. However, MCS argues that the Commission has recognized training in the past as necessary to properly effectuate the mandated program.

The claimant contends that training is reasonably necessary to comply with the mandated activities since most membership of boards and commissions do not remain static over time. The claimant notes that there are substantial penalties for failure to properly comply with the requirements of the Brown Act, including having all actions taken in violation of the Act being deemed void. The claimant also argues that most board and commission members are laypersons and not attorneys. Therefore, in order

for them to remain aware of the technical requirements of the Act, training is imperative. The claimant submitted five declarations in support of its position. A declaration by Kathleen Bales-Lange, Tulare County Counsel, states:

The reason for the subsequent training is that the membership of the various boards and commissions does not remain static. The membership changes as terms expire, or there are unscheduled vacancies due to resignations or incapacity...[¶] The requirements of the Brown Act are quite technical, and the penalties for violations are quite onerous. Thus, not only do new board and commission members need to be trained on the requirements of the Brown Act, but with the passage of time, members may forget the requirements and need refresher training.¹³

Therefore, based on the evidence in the record, staff included ongoing training on the closed session requirements of *Brown Act Reform* because it constitutes a reasonable method of complying with the mandated activities.¹⁴ However, it is limited to the members of only those legislative bodies that actually hold closed executive sessions.

In addition, the claimant proposed that *all* time of the trainer and legislative members is reimbursable, as well as *all* time for preparation of materials. The word “all” was deleted because only the portion of training specifically related to closed session requirements is reimbursable.

V. Claim Preparation and Submission

The claimant’s proposal included three reimbursement options for agenda preparation and posting, including closed session agenda items. These are the same options that are included in the amendment to the *Open Meetings Act* Parameters and Guidelines that was adopted by the Commission on November 30, 2000.

1. Actual Time – Eligible claimants can claim their actual costs.
2. Standard Time – This component has three parts, outlined below, because of differences between eligible claimants. The standard time would not apply to standard agenda items such as call-to-order, flag salute, public comments, and adjournment.¹⁵

Main Legislative Body Meetings of Counties and Cities - For each meeting, the number of agenda items would be multiplied by 30 minutes, and then by the blended productive hourly rate of the involved employees.¹⁶

¹³ Exhibit G, bates page 115.

¹⁴ California Code of Regulations, title 2, section 1183.1.

¹⁵ The standard times adopted for *Open Meetings Act* Parameters and Guidelines, as amended on November 30, 2000, were based on samples of *Open Meetings Act* reimbursement claims filed by cities, counties, and special districts with the SCO. The standard times for school districts were based on data collected by the Education Cost Mandated Network and San Diego Unified School District from reimbursement claim data that was on file with the SCO.

¹⁶ The blended productive hourly rate is calculated by determining the percentage of time spent by persons on the reimbursable activities and multiplying the productive hourly rate (including salaries and benefits) for each person times the percentage of time spent by that person.

Special District Meetings, and County and City Meetings Other than the Main Legislative Body - For each meeting, the number of agenda items would be multiplied by 20 minutes, and then by the blended productive hourly rate of the involved employees.

School and Community College Districts and County Offices of Education - For each meeting, the number of agenda items would be multiplied times the minutes shown below according to enrollment, and then by the blended productive hourly rate of the involved employees:

- Enrollment of 20,000 or more = 45 minutes per agenda item
 - Enrollment of 10,000 to 19,999 = 15 minutes per agenda item
 - Enrollment of less than 10,000 = 10 minutes per agenda item
 - County Office of Education = 45 minutes per agenda item
3. Flat Rate - Eligible claimants could claim \$90.10 per meeting.¹⁷ Adjustments to this uniform cost allowance would be made annually based on the Implicit Price Deflator.¹⁸

Only one reimbursement option can be selected for each type of meeting during a fiscal year, for claiming costs incurred for agenda preparation and posting, including closed session items. Claimants cannot choose different methods within a fiscal year, but they can switch the following year.

The Commission may adopt an allocation formula or uniform cost allowance in parameters and guidelines.¹⁹ The Commission's regulations provide that "whenever possible, an allocation formula or uniform allowance should be used as the basis for reimbursement."²⁰ The basis for the flat rate and the standard times was previously established in the *Open Meetings Act* Parameters and Guidelines, as amended on November 30, 2000. The activities of developing and posting the agenda are the same for *Open Meetings Act* and *Brown Act Reform*, except that the proposed *Brown Act Reform* Parameters and Guidelines include closed session agenda items. Therefore, staff finds that adopting standard times and a flat rate in these parameters and guidelines, which are based on rates previously adopted for *Open Meetings Act* Parameters and Guidelines, is appropriate. Further, under these proposed parameters and guidelines, eligible claimants would submit combined annual reimbursement claims for *Brown Act Reform* and *Open Meetings Act* beginning fiscal year 2001-2002.

Staff noted that claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training, regardless of the reimbursement option they chose to claim costs for agenda preparation and posting.

¹⁷ The \$100 flat rate adopted in the *Open Meetings Act* Parameters and Guidelines for fiscal year 1997-1998 was discounted using the implicit price deflator to arrive at the flat rate of \$90.10 for fiscal year 1993-1994.

¹⁸ Government Code section 17523.

¹⁹ Government Code section 17557, subdivision (d).

²⁰ California Code of Regulations, title 2, section 1183.1.

Sections V through IX

On February 27, 2002, the Commission conducted a workshop for parties to meet and discuss parameters and guidelines boilerplate language for local agencies, which includes sections V through IX, and the preamble to section IV. For purposes of consistency, staff modified the following sections to match the boilerplate language in the *Sex Offenders: Disclosure by Law Enforcement Officers* Parameters and Guidelines set for the March 28, 2002 Commission hearing: VII. Offsetting Savings and Reimbursements, VIII. State Controller's Office Required Certification, IX. Parameters and Guidelines Amendments, and the preamble to section IV.

Boilerplate modifications were also made for sections V. Claim Preparation and Submission, and VI. Supporting Data. However, these sections do not match standard boilerplate language. As discussed above, section V includes three reimbursement options for agenda preparation and posting, including closed session agenda items; and section VI specifies how the indirect cost rate is applied in the blended productive hourly rate calculation.

Staff Recommendation

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by Commission staff, beginning on page 13.²¹

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

²¹ See also Attachment A, Claimant's Proposed Parameters and Guidelines, as Modified by Commission Staff, without track changes.

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137 and 1138, Statutes of 1993

Chapter 32, Statutes of 1994

Open Meetings Act/Brown Act Reform

I. SUMMARY AND SOURCE OF THE MANDATE

Government Code, sections 54952, 54954.2, 54957.1 and 54957.47, require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act. ~~(Government Code, Sections 54950 *et seq.*, hereinafter referred to as the "Brown Act")~~ Section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session.

On ~~May 24, 2000~~ June 28, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision ~~that the test claim legislation on the *Brown Act Reform* test claim (CSM-4469).~~ The Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of ~~A~~article XIII B, ~~S~~section 6 of the California Constitution and Government Code, section 17514. The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, to include:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

It also required all "legislative bodies" to perform a number of additional activities in relation to the closed session requirements of the Brown Act, as follows:

- To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Gov. Code, § 54954.2, subd. (a).)

- To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
- To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). (Gov. Code, § 54957.7, subd. (b).)
- To provide copies of closed session documents as required. (Gov. Code, § 54957.1, subd. (b) and (c).)

The Commission previously adopted two test claims on the Brown Act:

1. Open Meetings Act

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim (CSM-4257). Statutes of 1986, chapter 641, added Government Code section 54954.2 to require that the legislative body of the local agency, or its designee, post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting in a location freely accessible to the public. The following types of "legislative bodies" were eligible for reimbursement:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.

Statutes of 1986, chapter 641 also added Government Code section 54954.3 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

2. School Site Councils and Brown Act Reform

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim (CSM-4501). This test claim was based on Government Code section 54954 and Education Code section 35147, which addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts.¹

¹ The parameters and guidelines for the *School Site Councils and Brown Act Reform* test claim are not included in these parameters and guidelines.

II. ~~PRIOR TEST CLAIMS~~

~~On March 23, 1988, the Commission adopted the *Open Meeting Act* test claim that added Government Code, sections 54954.2 and 54954.3 to the Brown Act. Section 54954.2 required the "legislative bodies" of local agencies for the first time to prepare and post agendas for public meetings at least 72 hours prior to the scheduled meeting. In addition, the agenda was to contain a brief description of each item to be discussed. Local agencies were also prohibited from taking action on any item that was not on the agenda. Section 54954.3 required that each agenda provide the public with the opportunity to address the legislative body during the meeting.~~

~~On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim, which was based on Government Code, section 54954 and Education Code, Section 35147 addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts.~~

III. ELIGIBLE CLAIMANTS

Any Counties, cities, a city and county, school and or special districts, as defined in Government Code, section 17518 are eligible claimants, that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

III.V. PERIOD OF REIMBURSEMENT

~~Section 17557 of the Government Code section 17557, prior to its amendment by Statutes of 1998, Chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate *Brown Act Reform* was filed on December 29, 1994. Statutes of 1993, chapters 1136, 1137, and 1138, became effective January 1, 1994. Therefore, costs incurred for Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994 are eligible for reimbursement on or after July 1, 1993. on or after January 1, 1994 for compliance with the *Brown Act Reform* mandate are eligible for reimbursement.~~

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

~~Claimants may use actual time, standard time or the flat rate specified in section VII for costs incurred beginning in fiscal year 1993-94, for those costs related to reimbursement for agenda preparation and posting, including closed-session items. Claimants must use the actual time methodology for claiming costs related to training, subsequent reporting of action taken in closed session, and providing copies of documents approved or adopted in closed session, beginning in fiscal year 1993-94.~~

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed except as otherwise allowed by Government Code, section 17564.

Initial years' costs shall not include any costs ~~which have been claimed that were claimable or reimbursed pursuant to *Open Meetings Act*, pursuant to Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000.~~ Reimbursement for these costs must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively.

Annual claims, commencing with the 2001-2002 fiscal year, shall include all costs for *Open Meetings Act* ~~as well as~~ and *Brown Act Reform*.

IV. REIMBURSABLE ACTIVITIES

A. Scope of Mandate

~~Local agencies shall be reimbursed for the increased costs which they are required to incur to prepare and post, at a site accessible to the public and at least 72 hours before the meeting, a single agenda containing a brief general description of each item of business to be transacted or discussed at any one regular meeting of the legislative body, and citing the time and location of the regular meeting. The agenda shall also include items to be discussed in closed session, as required by law. Further, every agenda for a regular meeting must state that there is an opportunity for members of the public to address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body, subject to the exceptions stated therein. Additionally, every session which has a closed session shall include the reporting requirements and disclosures pursuant to Government Code, Section 54957.1 of the action taken in closed session. Additionally, documentation provided from closed session within specified timelines is also included. Because of the technical requirements of the Brown Act, training on *Brown Act Reform* as well as periodic training of new members to the legislative body are also included within the scope of the mandate.~~

~~For each eligible claimant meeting the above criteria, the following cost items are reimbursable:~~

~~B. Reimbursable Activities of Government Code, Sections 54952, 54954.1, 54954.3, 54954.3, 54954.4, 54957.1 and 54957.7 pursuant to Chapter 641, Statutes of 1986. Chapter 238, Statutes of 1991, Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994.~~

For each eligible claimant, the following activities are eligible for reimbursement:

A. Open Session Activities

- ~~1. Increased costs to p~~Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting.² (Gov. Code, § 54954.2, subd. (a).)
- ~~2. Costs to p~~Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter

² As amended by Statutes of 1993, chapter 1136.

jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A :

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

B. Closed Session Activities

3-1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)

4-2. Increased costs to include subsequent reporting requirements of action taken in closed session, including: Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)

- a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8; (Gov. Code, § 54957.1, subd. (a)(1).)
- b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation; as set forth in the result of consultation under Section 43956.9; (Gov. Code, § 54957.1, subd. (a)(2).)
- c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported as specified in Section 54956.9; after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
- d. Disposition reached as to claims discussed in closed session shall be reported as specified on pursuant to Section 54956.95, including identification shall be reported as soon as reached in a manner that identifies of the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant; (Gov. Code, § 54957.1, subd. (a)(4).)
- e. Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session as set forth in Section 54957; and

f.e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party, as set forth in Section 54957.6.
(Gov. Code, § 54957.1, subd. (a)(6).)

5-3. Providing copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the time-lines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified.
(Gov. Code, § 54957.1, subd. (b) and (c).)

6-4. Training to the new members of the only those legislative bodies that actually hold closed executive sessions, on the new closed session requirements of *Brown Act Reform*, as well as training to all new members of the legislative body on the requirements of the *Brown Act* prior to or upon attaining office. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, all time of the trainer and legislative members is reimbursable. Additionally, all time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B :

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

VI. CLAIM PREPARATION AND SUBMISSION

~~Each claim for reimbursement claim for all costs incurred must be timely filed, and set forth a listing of each open meeting agenda for which reimbursement is claimed under this mandate. Each of the following cost elements must be identified for each reimbursable activity identified in section IV of this document.~~

A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items

Eligible claimants may use the actual time, standard time, or flat rate reimbursement options for claiming costs incurred for agenda preparation and posting, including closed session items. Eligible claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training.

For each type or name of meeting claimed during a fiscal year, select one of the following reimbursement options. For example, all city council meetings in a given fiscal year may be claimed on only one basis: actual time, standard time or flat-rate. If standard time is selected, all city council meetings must be claimed using this basis for the entire year. However, all city council meetings could be claimed on an actual cost basis during a subsequent fiscal year.

1. Actual Time

~~List the meeting names and dates. Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed. Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.~~

~~Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities by the employee.~~

Counties and cities may claim indirect costs pursuant to section V.H-EC.

2. Standard Time

a. Main Legislative Body Meetings of Counties and Cities

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 30 minutes and then by the blended productive hourly rate of the involved employees.

Counties and cities may claim indirect costs pursuant to section V.H-EC.

b. Special District Meetings, and County and City Meetings Other Than Main Legislative Body

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 20 minutes and then by the blended productive hourly rate of the involved employees.

Special districts, counties and cities may claim indirect costs pursuant to section V.H-EC.

c. School and Community College Districts and County Offices of Education

List the meeting names and dates. For each meeting, multiply the number of agenda items times the minutes per agenda item for County Offices of Education and for districts, by enrollment size, times the blended productive hourly rate of the involved employees. The minutes per agenda for County Offices of Education and for districts by enrollment size are:

County Offices of Education:	45 minutes
Districts:	
Enrollment 20,000 or more	45 minutes
Enrollment 10,000 – 19,999	15 minutes
Enrollment less than 10,000	10 minutes

School and community college districts and County Offices of Education may claim indirect costs pursuant to Section V.H-EC.

3. Flat Rate

List the meeting names and dates. Multiply the uniform cost allowance, shown in the table provided below, by the number of meetings. ~~Using the November 30, 2000 amended Parameters and Guidelines for Open Meetings Act with a 1997-98 base year rate of \$100, for fiscal year 1993-94, the uniform cost allowance is \$90.10. The uniform cost allowance shall be adjusted each subsequent year subsequent to fiscal year 1997-1998 by the Implicit Price Deflator referenced in Government Code section 17523.~~

1993-1994	\$ 90.10
1994-1995	92.44
1995-1996	95.12
1996-1997	97.31
1997-1998	100.00

~~B. Reimbursement for Training, Subsequent Reporting of Action Taken in Closed Session, and Providing Copies of Documents Approved or Adopted in Closed Session~~

~~List the meeting names and dates, or the dates of training. Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.~~

~~Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities by the employee.~~

~~C. Services, Equipment and Supplies~~

~~Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials or equipment acquired which have been consumed or expended specifically for the purposes of this mandate.~~

B. Direct Cost Reporting

Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

~~List the cost of fixed assets that have been acquired specifically for the purpose of this mandate. If a fixed asset is acquired for the *Open Meetings Act* and/or *Brown Act Reform* programs but is utilized in some way not directly related to the programs, only the pro-rata portion of the asset which is used for the purposes of the program is reimbursable.~~

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for

purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element B.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training members of the legislative body to perform the reimbursable activities, as specified in section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in section VI.

EC. Indirect Costs Rates

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department of program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Cities, Counties and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

School Districts

1. School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

County Offices of Education

2. County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the State-California Department of Education.

Community Colleges

3. Community colleges have the option of using (1) a federally approved rate, using the cost accounting principles from the ~~Office of Management and Budget~~ OMB Circular A-21 "Cost Principles of Educational Institutions", (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VII. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed must be traceable to source documents and/or worksheets that show evidence of and their validity of such costs and relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees.

calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

For those entities that elect reimbursement pursuant to ~~Option 2~~, the standard time methodology, option 2 in section V.H-A-2, documents showing the calculation of the blended productive hourly rate and copies of agendas shall be sufficient evidence. For those entities that elect reimbursement pursuant to ~~Option 3~~, the flat-rate methodology, option 3 in section V.H-A-3, copies of agendas shall be sufficient evidence. ~~Pursuant to Government Code, Section 17558.5, the supporting documents must be kept on file by the agency submitting the claim for a period of up to two years after the end of the calendar year in which the reimbursement claim is filed, and made available at the request of the State Controller or his agent.~~

The blended productive hourly rate, used in claiming standard or unit time reimbursements, may be calculated by determining the percentage of time spent by persons or classifications of persons on the reimbursable activities and multiplying the productive hourly rate (including salaries, benefits and indirect costs, if not claimed elsewhere) for each person or classification of persons times the percentage of time spent by that person or classification of persons. Claimants may determine a percentage allocation for the person or classification of persons in a base fiscal year and use that percentage allocation for subsequent future years by multiplying the base year percentages times the productive hourly rate for that person or classification of persons for the fiscal year of the reimbursement claim.

For example, a city manager may determine that the percentage of time spent on the reimbursable activities by various classifications in a base year of fiscal year 1998-1999 was as follows:

City Manager	17 %
City Attorney	15 %
City Clerk	36 %
Department Managers	9 %
Secretaries	23 %
Total	100 %

The city determines that the productive hourly rate (salaries, benefits, and indirect costs) for fiscal year 2000-2001 for each classification are as follows:

	Salary	Benefits	Indirect Cost Rate	Indirect Costs	Productive Hourly Rate
City Manager	\$60	\$12	29 %	\$13	\$85
City Attorney	\$55	\$10	30 %	\$15	\$80
City Clerk	\$40	\$ 8	31 %	\$12	\$60
Department Manager	\$45	\$ 9	30 %	\$11	\$65
Secretaries	\$18	\$ 5	25 %	\$ 7	\$30

The blended productive hourly rate for fiscal year 2000-2001 is determined by multiplying the percentages in the base year times the productive hourly rate in the fiscal year claimed, and adding the totals, as follows:

City Manager	17%	\$85	\$14.25
City Attorney	15%	\$80	\$12.00
City Clerk	36%	\$60	\$21.60
Department Manager	9%	\$65	\$ 5.85
Secretaries	23%	\$30	\$ 6.90
Total	100%		\$60.80

The city's claim would be determined by multiplying the blended productive hourly rate times the minutes per agenda item times the number of agenda items.

B. Record Keeping

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VIII. OFFSETTING SAVINGS AND ~~OTHER REIMBURSEMENTS~~

Any offsetting savings that the claimant experiences, in the same program as a direct result of this mandate the same statutes or executive orders found to contain a mandate must shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any other source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

~~Any eligible claimant or state agency may petition the Commission to amend the standard time and flat rate provisions stated herein. Pursuant to Title 2, California Code of Regulations, section 1183.2, parameters and guidelines amendments filed before the deadline for initial claims as specified in the claiming instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15, following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.~~

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

Hearing Date: March 28, 2002

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137 and 1138

Open Meetings Act/Brown Act Reform

I. SUMMARY OF THE MANDATE

Government Code sections 54952, 54954.2, 54957.1 and 54957.7, require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act.

On June 28, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision on the *Brown Act Reform* test claim (CSM-4469). The Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, to include:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

It also required all "legislative bodies" to perform a number of additional activities in relation to the closed session requirements of the Brown Act, as follows:

- To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Gov. Code, § 54954.2, subd. (a).)
- To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
- To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). (Gov. Code, § 54957.7, subd. (b).)
- To provide copies of closed session documents as required. (Gov. Code, § 54957.1, subd. (b) and (c).)

The Commission previously adopted two test claims on the Brown Act:

1. Open Meetings Act

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim (CSM-4257). Statutes of 1986, chapter 641, added Government Code section 54954.2 to require that the legislative body of the local agency, or its designee, post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting in a location freely accessible to the public. The following types of "legislative bodies" were eligible for reimbursement:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.

Statutes of 1986, chapter 641 also added Government Code section 54954.3 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

2. School Site Councils and Brown Act Reform

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim (CSM-4501). This test claim was based on Government Code section 54954 and Education Code section 35147, which addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts.¹

II. ELIGIBLE CLAIMANTS

Any county, city, a city and county, school or special district that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, prior to its amendment by Statutes of 1998, chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for *Brown Act Reform* was filed on December 29, 1994. Statutes of

¹ The parameters and guidelines for the *School Site Councils and Brown Act Reform* test claim are not included in these parameters and guidelines.

1993, chapters 1136, 1137, and 1138, became effective January 1, 1994. Therefore, costs incurred on or after January 1, 1994 for compliance with the *Brown Act Reform* mandate are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

Initial years' costs shall not include any costs that were claimable or reimbursed pursuant to *Open Meetings Act* Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000. Reimbursement for these costs must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively.

Annual claims, commencing with the 2001-2002 fiscal year, shall include all costs for *Open Meetings Act* and *Brown Act Reform*.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the following activities are eligible for reimbursement:

A. Open Session Activities

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting.² (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

² As amended by Statutes of 1993, chapter 1136.

B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
 - a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
 - b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of consultation under Section 43956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
 - c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
 - d. Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies of the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (Gov. Code, § 54957.1, subd. (a)(4).)
 - e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. (Gov. Code, § 54957.1, subd. (a)(6).)
3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)
4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

V. CLAIM PREPARATION AND SUBMISSION

Each reimbursement claim must be timely filed. Each of the following cost elements must be identified for each reimbursable activity identified in section IV of this document.

A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items

Eligible claimants may use the actual time, standard time, or flat-rate reimbursement options for claiming costs incurred for agenda preparation and posting, including closed session items. Eligible claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training.

For each type or name of meeting claimed during a fiscal year, select one of the following reimbursement options. For example, all city council meetings in a given fiscal year may be claimed on only one basis: actual time, standard time or flat-rate. If standard time is selected, all city council meetings must be claimed using this basis for the entire year. However, all city council meetings could be claimed on an actual cost basis during a subsequent fiscal year.

1. Actual Time

List the meeting names and dates. Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

Counties and cities may claim indirect costs pursuant to section V.C.

2. Standard Time

a. Main Legislative Body Meetings of Counties and Cities

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 30 minutes and then by the blended productive hourly rate of the involved employees.

Counties and cities may claim indirect costs pursuant to section V.C.

b. Special District Meetings, and County and City Meetings Other Than Main Legislative Body

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 20 minutes and then by the blended productive hourly rate of the involved employees.

Special districts, counties and cities may claim indirect costs pursuant to section V.C.

c. School and Community College Districts and County Offices of Education

List the meeting names and dates. For each meeting, multiply the number of agenda items times the minutes per agenda item for County Offices of Education and for districts, by enrollment size, times the blended productive hourly rate of the involved employees. The minutes per agenda for County Offices of Education and for districts by enrollment size are:

County Offices of Education:	45 minutes
Districts:	
Enrollment 20,000 or more	45 minutes
Enrollment 10,000 – 19,999	15 minutes
Enrollment less than 10,000	10 minutes

School and community college districts and County Offices of Education may claim indirect costs pursuant to section V.C.

3. Flat Rate

List the meeting names and dates. Multiply the uniform cost allowance, shown in the table provided below, by the number of meetings. The uniform cost allowance shall be adjusted each year subsequent to fiscal year 1997-1998 by the Implicit Price Deflator referenced in Government Code section 17523.

1993-1994	\$ 90.10
1994-1995	92.44
1995-1996	95.12
1996-1997	97.31
1997-1998	100.00

B. Direct Cost Reporting

Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element B.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training members of the legislative body to perform the reimbursable activities, as specified in section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose

(related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in section VI.

C. Indirect Cost Rates

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department of program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Cities, Counties and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total

allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

School Districts

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

Community Colleges

Community colleges have the option of using (1) a federally approved rate, using the cost accounting principles from the OMB Circular A-21 "Cost Principles of Educational Institutions", (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed must be traceable to source documents that show evidence of their validity and relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

For those entities that elect reimbursement pursuant to the standard time methodology, option 2 in section V.A, documents showing the calculation of the blended productive hourly rate and copies of agendas shall be sufficient evidence. For those entities that elect reimbursement pursuant to the flat-rate methodology, option 3 in section V.A, copies of agendas shall be sufficient evidence.

The blended productive hourly rate, used in claiming standard or unit time reimbursements, may be calculated by determining the percentage of time spent by persons or classifications of persons on the reimbursable activities and multiplying the productive hourly rate (including salaries, benefits and indirect costs, if not claimed elsewhere) for each person or classification of persons times the percentage of time spent by that person or classification of persons. Claimants may determine a percentage allocation for the person or classification of persons in a base fiscal year and use that percentage allocation for subsequent future years by multiplying the base year percentages times the productive hourly rate for that person or classification of persons for the fiscal year of the reimbursement claim.

For example, a city manager may determine that the percentage of time spent on the reimbursable activities by various classifications in a base year of fiscal year 1998-1999 was as follows:

City Manager	17 %
City Attorney	15 %
City Clerk	36 %
Department Managers	9 %
Secretaries	23 %
Total	100 %

The city determines that the productive hourly rate (salaries, benefits, and indirect costs) for fiscal year 2000-2001 for each classification are as follows:

	Salary	Benefits	Indirect Cost Rate	Indirect Costs	Productive Hourly Rate
City Manager	\$60	\$12	29 %	\$13	\$85
City Attorney	\$55	\$10	30 %	\$15	\$80
City Clerk	\$40	\$ 8	31 %	\$12	\$60
Department Manager	\$45	\$ 9	30 %	\$11	\$65
Secretaries	\$18	\$ 5	25 %	\$ 7	\$30

The blended productive hourly rate for fiscal year 2000-2001 is determined by multiplying the percentages in the base year times the productive hourly rate in the fiscal year claimed, and adding the totals, as follows:

City Manager	17 %	\$85	\$14.25
City Attorney	15 %	\$80	\$12.00
City Clerk	36 %	\$60	\$21.60
Department Manager	9 %	\$65	\$ 5.85
Secretaries	23 %	\$30	\$ 6.90
Total	100 %		\$60.80

The city's claim would be determined by multiplying the blended productive hourly rate times the minutes per agenda item times the number of agenda items.

B. Record Keeping

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain a mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any other source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

ITEM 3 - ERRATA

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137 and 1138

Open Meetings Act/Brown Act Reform

Staff recommends the following changes, identified with double strikeout and underline, to the proposed parameters and guidelines to further clarify reimbursable activities and the reimbursement options:

1. On Page 16, in IV. Reimbursable Activities, re-name "Open Session Activities" to "Agenda Preparation and Posting Activities."

A. ~~Open Session~~ Agenda Preparation and Posting Activities

2. On Page 17, in IV. Reimbursable Activities, after the bullet that begins "Permanent and Temporary Advisory Bodies", insert the following text:

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

3. On Page 17, in section B.2.b, correct the code section reference as follows:

- b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation, as set forth in the result of consultation under Section 43956.9; 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)

4. On Page 18, add a cross reference to section V.B.6 to the end of section IV.B.4.

~~6.4. Training to the new members of the only those legislative bodies that actually hold closed executive sessions, on the new closed session requirements of *Brown Act Reform*, as well as training to all new members of the legislative body on the requirements of the Brown Act prior to or upon attaining office. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, all time of the trainer and legislative members is reimbursable. Additionally, all time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.~~

5. On Page 19, insert a reference to section IV.A and a footnote (appears at the bottom of this page) as follows:

A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items

Eligible claimants may use the actual time, standard time, or flat rate reimbursement options for claiming costs incurred pursuant to section IV.A of these parameters and guidelines for agenda preparation and posting, including closed session items.¹ Eligible claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training.

6. On Page 20, insert the same footnote mentioned above (appears at the bottom of this page) after “Flat Rate”

7. On Page 22, replace the reference to section IV with “IV.B” as follows:

6. Training

Report the cost of training members of the legislative body to perform the reimbursable activities, as specified in section IV.B of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in section VI.

¹ The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under *Brown Act Reform*. Refer to sections III and IV of these parameters and guidelines.

COMMISSION ON STATE MANDATES

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June 29, 2001

Mr. Glen Everroad, Revenue Manager
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658

Mr. Glen Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

State Agencies and Interested Parties (See Attached Mailing List)

RE: Adopted Statement of Decision
Brown Act Reform, CSM 4469
City of Newport Beach, Claimant
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
Statutes of 1993, Chapters 1136, 1137 & 1138
Statutes of 1994, Chapter 32

Dear Mr. Everroad and Mr. Haas:

The Commission on State Mandates adopted the attached Statement of Decision on June 28, 2001. This decision is effective on June 29, 2001.

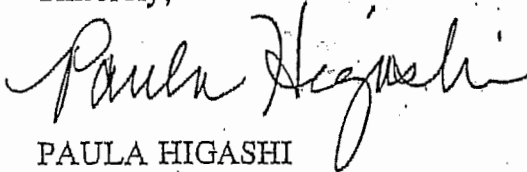
State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office. Following is a description of the responsibilities of all parties and the Commission during the parameters and guidelines phase.

- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code 17557 and Title 2, CCR sections 1183.1 et seq. (the regulations), the claimant is responsible for submitting proposed parameters and guidelines by July 30, 2001. See Government Code section 17557 and Title 2, CCR sections 1183.1 et seq. for guidance in preparing and filing a timely submission.
- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, the Commission will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. All recipients will be given an opportunity to provide written comments or recommendations to the Commission within 15 days of service. The claimant and other interested parties may submit written rebuttals. See CCR section 1183.11.

- Adoption of Parameters and Guidelines. After review of the proposed parameters and guidelines and all comments, Commission staff will recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's original submission. See CCR section 1183.12.

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,



PAULA HIGASHI

Executive Director

Enclosure: Adopted Statement of Decision

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MAILED: Mail List FAXED: _____
DATE: 6/29/01 INITIAL: CD
CHRON: _____ FILE: _____
WORKING BINDER: ☒ _____

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes of 1993, Chapters 1136, 1137, 1138 and Statutes of 1994, Chapter 32;

Filed on December 29, 1994 and amended on August 7, 2000;

By the City of Newport Beach, Claimant.

No. CSM 4469

Brown Act Reform

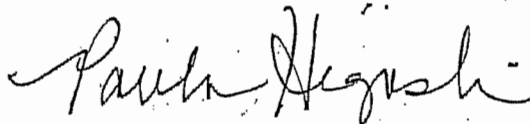
STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ., TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on June 28, 2001)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on June 29, 2001.



Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes of 1993, Chapters 1136, 1137, 1138 and Statutes of 1994, Chapter 32;

Filed on December 29, 1994 and amended on August 7, 2000;

By the City of Newport Beach, Claimant.

No. CSM 4469

Brown Act Reform

STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on June 28, 2001)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on May 24, 2001 during a regularly scheduled hearing. Mr. Glen Everroad and Ms. Pamela Stone appeared on behalf of the City of Newport Beach. Mr. Allan Burdick appeared on behalf of the California State Association of Counties. Mr. Cedrik Zemitis and Mr. Jim Lombard appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 4 to 2, approved this test claim.

BACKGROUND AND FINDINGS

The test claim legislation, Government Code sections 54952, 54954.2, 54957.1 and 54957.7, requires the "legislative bodies" of local agencies¹ to comply with certain changes to the Ralph M. Brown Act (Gov. Code § 54950 et seq., hereafter referred to as the Brown Act or the Act).² Section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and, section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session.

¹ As used in the Ralph M. Brown Act, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency. (Gov. Code, § 54951.)

² All further statutory references are to the California Government Code unless otherwise indicated.

The California Legislature enacted the Brown Act in 1953 based on an Assembly Judiciary Committee Report regarding the "secret decisionmaking" of local governments. The Act declared the law's intent that deliberations as well as action of local agencies occur openly and publicly. It also represented the Legislature's determination of how the balance should be struck between public access to meetings of multi-member public bodies on the one hand and the need for confidential candor, debate, and information gathering on the other.³ The underlying theme of the Brown Act recognizes that:

The people [of this State], in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.⁴

Since the Brown Act was enacted, it has been amended regularly to expand the requirements of the Act and to clarify the "legislative bodies" to which the requirements of the Act apply. Numerous court cases and Attorney General Opinions have re-affirmed the Legislature's original intent to ensure that deliberations and decisionmaking of local agencies be conducted in an open forum with full participation from the public.

Prior Test Claims

The Commission on State Mandates has previously determined two test claims on the Brown Act.

Open Meetings Act (CSM-4257)

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim that added Government Code sections 54954.2 and 54954.3 to the Brown Act. Section 54954.2 required the "legislative bodies" of local agencies *for the first time* to prepare and post agendas for public meetings at least 72 hours prior to the scheduled meeting. In addition, the agenda was to contain a brief description of each item to be discussed. Local agencies were also prohibited from taking action on any item that was not on the agenda. Section 54954.3 required that each agenda provide the public with the opportunity to address the legislative body during the meeting.

Under CSM-4257, local agencies were eligible for reimbursement for the Brown Act requirements for the following types of legislative bodies: 1) the governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity; 2) any board, commission, committee, or body which exercises authority delegated to it by the legislative body; and, 3) planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body. The Commission's Parameters and Guidelines for CSM-4257 specifically provided reimbursement for the increased costs to prepare and post a single agenda 72 hours before a meeting of the legislative

³ California Attorney General's Office, The Brown Act, Open Meetings for Local Legislative Bodies (1994).

⁴ Government Code section 54950.

body of a local agency containing a brief general description of each item of business to be transacted or discussed.

School Site Councils and Brown Act Reform (CSM-4501)

The Brown Act came before the Commission again in test claim CSM-4501, *School Site Councils and Brown Act Reform*, filed by the Kern High School District, San Diego Unified School District, and the County of Santa Clara. This test claim was filed on Government Code section 54952 and Education Code section 35147 and addressed the application of the open meeting provisions of the Brown Act to specified schoolsite councils and advisory committees of school districts. On April 27, 2000, the Commission approved this test claim finding that Statutes of 1993, chapter 1138 among other things, added Government Code section 54952, subdivision (a), which provided, in relevant part, that the term "legislative body" for purposes of the open meeting requirements of the Brown Act also included any local body created by state or federal statute.

The Commission also found that Statutes of 1994, chapter 239 removed certain school site councils and advisory committees from the full requirements of the Brown Act, but added Education Code section 35147, which imposed an abbreviated set of open meeting requirements on school site councils and advisory committees established as part of the following programs: School Improvement Program; Native American Indian Early Childhood Education Act; Chacon-Moscone Bilingual-Bicultural Education Act; School-Based Coordination Program; Compensatory Education Program; Migrant Education Program; Motivation and Maintenance Program; and the federal Indian Education Program.

The Commission's Parameters and Guidelines for CSM-4501 provided reimbursement for notice and agenda activities for school district's schoolsite councils and certain advisory committees.

Claimant's Contentions

In their test claim, claimant contends that the test claim legislation imposes an increased level of service on local agencies. The claimant asserts the following:

- Government Code section 54952, subdivisions (a), (b) and (c), as amended, impose a higher level of service on local agencies by expanding the definition of "legislative body" which is subject to the notice requirements of the Brown Act. The agenda preparation and posting requirements of section 54954.2 now apply to an increased number of entities such as standing committees, advisory bodies and other local bodies created by state or federal statute;
- Government Code section 54954.2, subdivision (a), as amended, imposes a higher level of service on local agencies by expanding the notice requirements to include a description of each item to be discussed or transacted in closed session;

- Government Code sections 54957.1, subdivisions (a), (b) and (c) and 54957.7, subdivisions (a), (b) and (c), as amended, impose a higher level of service on local agencies by expanding the nature and extent of the required public reporting of action taken in closed sessions; and,
- These amendments require an increased level of service by local agencies, necessitating training for local agencies.

Department of Finance Contentions

The Department of Finance (DOF) submitted comments on this test claim on June 1, 1995. Their contention is that while chapters 1136 and 1137 (agenda and notice requirements and closed session requirements) may have resulted in reimbursable state-mandated costs pertaining to certain notification requirements, they may also have resulted in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. In addition, the DOF contends that the intent of chapter 1138 (definition of legislative body) was to provide cost savings to local governments by simplifying and clarifying the Brown Act requirements. Finally, regarding chapter 32, the DOF states that this is essentially clean-up legislation for the other three named chapters and does not affect the scope of the changes made by those chapters. Consequently, it is the DOF's belief that there are no reimbursable state-mandated costs in that legislation.⁵

At the hearing, the DOF argued that local agencies requested the enactment of the test claim legislation, and therefore, there are no costs mandated by the state.

Interested Party Contentions

The County Counsel of Marin County submitted comments in support of the test claim on May 30, 1995. Their contention is that the 1993 and 1994 amendments to the Brown Act require local agencies to perform an increased level of service resulting in increased state mandated costs for reporting requirements, record keeping, and other County staff responsibilities. In addition, the County claims that these provisions have resulted in an increased level of service to advisory bodies, which are now subject to the Brown Act amendments.

Interested Persons Contentions

Former Senator Quentin Kopp, author of the majority of the Brown Act legislation, submitted comments in opposition to the test claim. His contention is that the amendments to the Brown Act were proposed to reduce the costs to local agencies for posting agendas, making oral statements regarding closed session items, and providing a description of the items on the agenda.

⁵ Regarding chapter 32, the test claim submitted by claimant stated: "The provisions of Chapter 32, Statutes of 1994, did not effect the scope of the state mandated activities and costs described in this test claim."

The California Newspaper Publishers Association submitted comments in opposition to the test claim. Their contention is that the changes to the Brown Act do not create a state mandated local program because the amendments were intended by the legislature to be instructive, not to expand the open meeting requirements. In particular, the clarifying language "A brief general description of an item generally need not exceed 20 words" was added to radically reduce the costs of creating and posting agendas. The First Amendment Coalition submitted comments in opposition to the test claim adopting the arguments and conclusion of the California Newspaper Publishers Association.

Paul C. Minney of Spector, Middleton, Young & Minney, LLP submitted comments on the Draft Staff Analysis. His contention is that both permanent and temporary decisionmaking committees or boards created by formal action are "new legislative bodies" under the test claim statute because these bodies can exercise authority broader than that granted to the legislative body.

COMMISSION FINDINGS

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must direct or obligate an activity or task upon local governmental entities. If the statutory language does not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

Further, the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word "program," subject to article XIII B, section 6 of the California Constitution, as an activity that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the "program" is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose "costs mandated by the state."⁶

The test claim legislation requires the performance of certain activities related to public meetings by specified "legislative bodies" of local agencies. These local governmental bodies are carrying out a basic governmental function of making decisions regarding the operations of local agencies that provide services to the public. The mandatory compliance with the Brown Act is unique to local agencies; it is a peculiarly governmental function that does not apply to all residents and entities in the state. Therefore, the Commission finds that compliance by

⁶ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

local agencies with the open meeting requirements of the test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

The Commission continued its inquiry to determine if the test claim legislation constitutes a new program or higher level of service and imposes "costs mandated by the state" upon local agencies. Claimant contends that the test claim legislation imposes a higher level of service upon local agencies because the agenda preparation and posting requirements apply to an increased number of entities now defined as "legislative bodies" such as standing committees, advisory bodies and other local bodies created by state or federal statute. Claimant also contends that the test claim legislation requires new activities regarding the inclusion of closed session items on agendas and the reporting of closed session items both prior to and after the closed session. The analysis of these issues for the statutes at issue is discussed below.

Issue 1: Does the test claim legislation impose a new program or higher level of service upon local governmental bodies within the meaning of article XIII B, section 6 of the California Constitution?

Issue 1 is presented in two parts: Part One discusses the entities subject to the open session notice and agenda requirements and Part Two discusses the closed session requirements for all legislative bodies.

Part One: Entities Subject to Open Session Notice and Agenda Requirements

The notice and agenda provisions of the Brown Act are found in Government Code section 54954.2. Under the test claim legislation, this section requires the "legislative bodies" of local agencies to post a notice and agenda containing a brief general description of each item to be discussed at the meeting. Section 54954.2 states in relevant part the following:

At least 72 hours before a regular meeting, the legislative body of a local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.

New Entities Subject to the Notice & Agenda Requirements

Government Code section 54952 describes the "legislative bodies" required to comply with the Brown Act. The test claim legislation substantially amended section 54952 to clarify and describe the "legislative bodies" in greater detail. Section 54952 now defines "legislative body" in relevant part as follows:

- (a) The governing body of a local agency or any other local body created by state or federal statute.
- (b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However,

advisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

Thus, the "legislative bodies" required to comply with the Brown Act now include the following:

- The governing body of a local agency;
- A local body created by state or federal statute;
- A permanent decisionmaking body created by formal action;
- A temporary decisionmaking body created by formal action;
- A permanent advisory body created by formal action (except an advisory body with less than a quorum of the members);
- A temporary advisory body created by formal action (except an advisory body with less than a quorum of the members); and,
- Standing committees, irrespective of their composition with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action.

Under prior law, the "legislative body" of a local agency required to comply with the Brown Act was defined in several statutory provisions. Section 54952 defined the governing body of a local agency or any board or commission thereof, and any body on which officers of a local agency serve in their official capacity as members; section 54952.2 defined any multimember body with delegated authority of the legislative body; section 54952.3 defined any advisory body created by formal action and included both reduced notice requirements and an exemption from all Brown Act requirements for a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body; and, section 54952.5 defined planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency as "legislative bodies."

While amending section 54952, the test claim legislation also repealed sections 54952.2, 54952.3 and 54952.5. Based on the following analysis, the Commission finds that the test claim legislation created the following two new "legislative bodies" required to comply with the provisions of the Brown Act including the notice and agenda requirements of section 54954.2:

- Any local body created by state or federal statute

This body was not identified as a "legislative body" in prior law. Thus, the Commission finds that under the test claim legislation, it is a new body required to comply with the open session notice and agenda requirements imposed by Government Code section 54954.2; and,

- Standing committees with less than a quorum of the governing body which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action

The test claim legislation defines legislative body to include "standing committees of a legislative body, *irrespective of their composition*, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action." Historically, standing committees were permanent committees that met regularly and considered subjects of a particular class.⁷ Their composition, however, varied depending on the body that created them.

Prior to the enactment of the test claim legislation, the various statutory provisions regarding the application of the Brown Act created much confusion as to whether committees, regardless of their composition, fell under the requirements of the Act. However, numerous judicial decisions and opinions of the Attorney General found that the Brown Act essentially governed *all* meetings of a *quorum* of the legislative body of a local agency when the public's business was discussed.⁸

In 1993, just prior to the passage of the test claim legislation, this issue was finally resolved in the *Freedom Newspaper* case.⁹ In *Freedom*, a newspaper publisher sought a writ of mandate to compel a county employees retirement system board of directors to allow the public to attend meetings of the board's operations committee. The committee was advisory in nature and was composed of four members of the nine-member board. The Supreme Court held that since the operations committee was an advisory committee composed solely of board members *numbering less than a quorum of the board*, the committee was not a "legislative body" pursuant to the provisions of Government Code section 54952.3, and was therefore excluded from the open meeting requirements of the Brown Act. The *Freedom* Court agreed with a long-standing 1968 Attorney General Opinion that stated: "[w]e have consistently concluded that committees composed of *less than a quorum of the legislative body creating them and not established on a permanent basis for a continuing function are not subject to the open meeting requirements of that Act.*" (Emphasis supplied).¹⁰

Thus, the Commission finds that while standing committees with less than a quorum of the members of the legislative body were exempt from the requirements of the Brown Act under prior law, the test claim legislation now defines "standing committees, *irrespective of their composition*" as new bodies required to comply with the open session notice and agenda requirements imposed by section 54954.2.

Regarding the other five bodies identified in the test claim legislation, the Commission finds they are not new "legislative bodies" because they were identified in prior law as follows:

⁷ 79 Ops. Cal. Atty. Gen. 69, 72 (1996).

⁸ *Id.*, at page 69, fn 3.

⁹ *Freedom Newspapers, Inc., v. Orange County Employees Retirement System Board of Directors* (1993) Cal.4th 821, 832-833.

¹⁰ *Id.*, at pages 828-829.

- Governing body of a local agency

This body is identified as a "legislative body" in prior law in section 54952 and thus it is not a new body.

- Permanent decisionmaking committee or board created by formal action

Interested Person, Paul C. Minney, contends that permanent decisionmaking committees created by formal action were not subject to the Brown Act before the enactment of the test claim legislation. In his comments, he states:

Staff's conclusion [in the draft staff analysis] is predicated upon the assumption that the legislative body of a local agency can only create a "permanent decision making board" which may exercise the authority of the body that created it. This assumption is incorrect. For example, when a school district approves a charter school (by formal action) it creates a permanent body with decision making body [sic] that exercises authority broader than that granted to the school district..

The Commission disagrees. Under prior law, section 54952.2 stated:

As used in this chapter, "legislative body" also means *any* board, commission, committee, or similar multimember body which exercises *any authority* of a legislative body of a local agency *delegated* to it by that legislative body. (Emphasis added.)

Also, under prior law, section 54952.5 specifically included permanent boards and commissions of local agencies within the coverage of the Brown Act. That section stated:

As used in this chapter, "legislative body" also includes, but is not limited to, planning commissions, library boards, recreation commissions, *and other permanent boards or commissions* of a local agency. (Emphasis added.)

When determining the intent of a statute, the first step is to look at the statute's words and give them their plain and ordinary meaning. Where the words of the statute are not ambiguous, they must be applied as written and may not be altered in any way.¹¹ The plain language of former sections 54952.2 and 54952.5 include permanent boards and commissions as legislative bodies and any board or commission that exercises any authority delegated to it; i.e. decisionmaking authority.

Moreover, in their 1989 booklet, *Open Meeting Laws*, the Attorney General's Office determined that decisionmaking bodies were required to comply with the Brown Act before the enactment of the test claim legislation. In the booklet, the Attorney General's Office states:

Under current law, decision-making bodies would primarily be covered under section 54952 or 54952.2 and advisory committees under section 54952.3. However, section 54952.5 was invoked by this office to apply to a hearing

¹¹ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777; *Carrisales v. Department of Corrections* (1999) 21 Cal.4th 1132.

board of an air pollution control district. (71 Ops. Cal. Atty. Gen. 96 (1988).) Although there is not a published opinion or indexed letter precisely on point, we think that permanent committees (e.g., budget or finance committees) comprised solely of less than a quorum of the members of a board or commission were not intended to be covered by section 54952.5. (See discussion of less than a quorum exception in section C(6) at page 20 in this pamphlet.) *However, if such committees "exercise" enough "authority" "delegated" to them by a legislative body, they might be covered by section 54952.2 as a decision-making body rather than an advisory body.*

While the Attorney General's views do not bind the Commission, they are entitled to considerable weight. This is especially true here since the Attorney General regularly advises many local agencies about the meaning of the Brown Act and publishes a manual designed to assist local governmental agencies in complying with the Act's open meeting requirements.¹²

Accordingly, the Commission finds that permanent decisionmaking bodies created by formal action were subject to the Brown Act before the enactment of the test claim legislation and, thus, are not new.

- Temporary decisionmaking committee or board created by formal action

This body is also identified as a "legislative body" in prior law under section 54952.2 as discussed above. Section 54952.2 stated:

As used in this chapter, "legislative body" also means *any* board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body. (Emphasis added.)

For the same reasons discussed under the section analyzing permanent decisionmaking bodies, the Commission finds that temporary decisionmaking bodies created by formal action were subject to the Brown Act before the enactment of the test claim legislation and, thus, are not new.

- Permanent advisory committee or board created by formal action (except less than a quorum of the members)

This body is identified under prior law in sections 54952.3 and 54952.5. Section 54952.3 defined "legislative body" as *any* advisory committee created by formal action. In addition, section 54952.3 provides an exception for any advisory committee composed solely of less than a quorum of the members of the legislative body. Section 54952.5 also defined "legislative body" to include permanent boards or commissions of a local agency. Thus, the Commission finds that permanent advisory committees or boards created by formal action (except less than a quorum of the members) were "legislative bodies" under prior law.

¹² *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors*, *supra*, 6 Cal.4th at p. 829.

- Temporary advisory committee or board created by formal action (except less than a quorum of the members)

This body is identified under prior law in section 54952.3 as discussed above, and thus, the Commission finds that this body was a "legislative body" under prior law.

- Standing committees comprised of a quorum of the members of the legislative body

These bodies are also defined as a "legislative body" under prior law. Standing committees, by definition, are permanent committees that regularly consider a particular subject matter. When comprised of a quorum of the members of the legislative body, these committees fall under the definition of a committee with delegated authority since they are empowered to make decisions on behalf of the legislative body.¹³ In addition, standing committees comprised of a quorum of the members fall under the definition of "legislative body" in former Government Code sections 54952.3 and 54952.5 (i.e. permanent advisory committees of a local agency). Thus, the Commission finds that standing committees composed of at least a quorum of the members of the legislative body are not new bodies under the test claim legislation.

The chart below provides a summary of the Commission's findings:

Test Claim Legislation Section 54952	Prior Law Sections 54952, 54952.3, 54952.3, 54952.5
Governing body	§ 54952. Governing body
Local body created by state or federal statute	NEW
Permanent decisionmaking committee or board created by formal action	§ 54952.2 Any board, committee, body that exercises any authority of a legislative body <i>delegated</i> to it by the legislative body § 54952.5 Planning commissions, library boards, recreation commissions, and other <i>permanent</i> boards or commissions of a local agency
Temporary decisionmaking committee or board created by formal action	§ 54952.2
Permanent advisory committee or board created by formal action (except less than a quorum of the members)	§ 54952.3 Any advisory committee created by formal action (except less than a quorum of the members) § 54952.5 Planning commissions, library boards, recreation commission, and other <i>permanent</i> boards or commissions of a local agency
Temporary advisory committee or board created by formal action (except less than a quorum of the members)	§ 54952.3

¹³ Former Government Code section 54952.2 stated in relevant part as follows:

"...legislative body also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body."

Standing committees, irrespective of their composition (i.e. even those with less than a quorum of the members of the legislative body) with a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.	NEW--Standing committees with less than a quorum of the members. However, standing committees with a quorum of members of the legislative body are covered in prior law through §§ 54952.2, 54952.3 and 54952.5.
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Based on the foregoing, the Commission finds that Government Code sections 54952 and 54954.2, subdivision (a), of the test claim legislation constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for two new bodies (local bodies created by state or federal statute and standing committees with less than a quorum of the members of the legislative body with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action) to prepare and post an agenda of their meetings 72 hours prior to the meeting which contains a brief general description of each item to be transacted or discussed at the meeting.

Advisory Bodies Subject to the Notice & Agenda Requirements

In the *Open Meetings Act* (CSM-4257) test claim, the Commission determined that Government Code section 54954.2 imposed a reimbursable state mandated program upon "all legislative bodies," as defined, to post a notice and agenda 72 hours prior to the meeting of a legislative body. That section also required that the notice and agenda contain a brief general description of all items to be discussed at the meeting. Section 54954.2 was enacted in 1986 and applied to all legislative bodies, which by definition included advisory bodies before the enactment of the test claim legislation.

However, prior law (former Government Code section 54952.3, which was enacted in 1968) also *exempted* advisory bodies from the regular notice and agenda provisions of the Act and held them to significantly reduced notice requirements:

Meetings of such advisory commissions, committees or bodies...shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.

If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. *No other notice of regular meetings is required.* (Emphasis added.)

Thus, prior law, as specified in sections 54954.2 and 54952.3, imposed conflicting duties on advisory bodies. If an advisory body complied with section 54952.3 by not preparing and posting an agenda, did it violate section 54954.2? In other words, which statute constitutes prior law with respect to the duties imposed on advisory bodies?

Sutherland Statutory Construction, a treatise on statutory construction, explains that whenever the legislature enacts a provision, it has in mind previous statutes relating to the same subject matter. In the absence of any express repeal or amendment, the new provision is presumed to be in accord with the legislative policy embodied in those prior statutes. When a conflict

exists, the more specific statute controls over the more general one.¹⁴ However, where the conflict is irreconcilable, the statute that is the more recent of the two conflicting statutes prevails.¹⁵

In this case, the Commission finds the express language of section 54952.3 is more specific than the provisions of section 54954.2 and thus, prevails as prior law. Section 54952.3 specifically identified advisory commissions and committees as legislative bodies that were not required to prepare and post an agenda. They were only required to deliver notice of their meetings 24-hours prior to the meeting and to provide in their bylaws for the time and place of holding regular meetings. In contrast, section 54954.2 generally referred to "the legislative body of the local agency, or its designee," when describing the bodies to which the notice requirements applied. Thus, by the repeal of section 54952.3 by the test claim legislation, advisory bodies are now subject, for the first time, to the full notice and agenda requirements specified in section 54954.2, subdivision (a), of the Brown Act.

Therefore, the Commission finds that Government Code section 54954.2, subdivision (a), constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all permanent and temporary advisory bodies created by formal action (except less than a quorum of the members of the legislative body) to comply with the full notice and agenda requirements of the Brown Act by preparing and posting an agenda of their meetings 72 hours prior to the meeting which contains a brief general description of each item to be transacted or discussed at the meeting.

Part Two: Closed Session Requirements

Under prior law, the legislative body was required to state the reasons for a closed session either before or after the closed session and to publicly report the action and vote taken in closed session regarding the appointment, employment or dismissal of a public employee. The test claim legislation added four new closed session requirements that apply to all "legislative bodies" including those newly defined under the test claim legislation.

Notice and Agenda Requirements

The test claim legislation amended the notice and agenda provisions to include closed session items on the agenda. Section 54954.2 states, in relevant part, the following:

At least 72 hours before a regular meeting, the legislative body of a local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Underlined portion indicates amendments to this section by the test claim legislation).

¹⁴ *People v. Tanner* (1979) 24 Cal.3d 514, 521, where the California Supreme Court states that "[a] specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates."

¹⁵ 2B, Sutherland, Statutory Construction (5th Ed. 1994) § 51.02.

Under prior law, the legislative body was only required to state the general reason or reasons for the closed session either prior to or after holding the closed session and if desired, cite the statutory authority under which the session was being held.¹⁶ The test claim legislation now requires a brief general description of closed session items to be included on the agenda for the meeting.

Thus, the Commission finds that Government Code section 54954.2, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for ~~all legislative bodies~~ defined in Government Code section 54952 to provide a brief general description of all items to be discussed in closed session on the agenda of the meeting.

Prior Disclosure Requirements

Under prior law, section 54957.7 only required a legislative body, prior to *or* after the closed session, to state the general reason for the closed session and to include the appropriate statutory authority, if desired. The test claim legislation amended this section to provide, in relevant part, as follows:

- (a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda.

The test claim legislation now requires all legislative bodies to disclose each item to be discussed in closed session prior to the start of the closed session.

Accordingly, the Commission finds that Government Code section 54957.7, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all "legislative bodies" as defined in Government Code section 54952 to disclose, prior to holding a closed session, each item to be discussed in closed session.

Subsequent Reporting Requirements

Subdivision (b) was added to section 54957.7 by the test claim legislation and provides as follows:

- (b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

¹⁶ Former Government Code section 54957.7.

Section 54957.1, subdivision (a) of the test claim legislation added an extensive list of items requiring the legislative body to publicly report, either orally or in writing,¹⁷ the actions and votes taken in closed session for the following items:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as specified below:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

¹⁷ Government Code section 54957.1(b) provides in relevant part the following:

"Reports that are required to be made pursuant to this section may be made orally or in writing."

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

Under prior law, the sole reporting requirement for closed sessions under section 54957.1 was to report at the current or a subsequent meeting, any action taken and any roll call vote *to appoint, employ, or dismiss a public employee*.¹⁸ Other issues that could be discussed in closed session, such as licensing matters, real estate negotiations or pending litigation did not require any reporting in a public session.¹⁹ The test claim legislation now requires the legislative body to reconvene into public, open session and report the actions and votes taken on the five new items listed above which were discussed in closed session.

Therefore, the Commission finds that Government Code sections 54957.7, subdivision (b), and 54957.1, subdivision (a), of the test claim legislation constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative bodies" in Government Code section 54952 to reconvene in public session prior to adjournment and report the five items identified in section 54957.1, subdivision (a) (1-4, 6) which were discussed in closed session.

Documentation Requirements

Subdivisions (b) and (c) of section 54957.1 of the test claim legislation concern the provision of documentation from closed sessions to members of the public. This section provides, in relevant part, as follows:

¹⁸ Former section 54957.1 stated the following:

"The legislative body of any local agency shall publicly report at the public meeting during which the closed session is held or at its next public meeting any action taken, and any roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the legislative body."

¹⁹ Government Code sections 54956.7, 54956.8, 54956.9, 54957.

(b)...The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendment for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the actions referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

Prior to the test claim legislation, section 54957.1 did not address writings. The subject of 'writings' was addressed in section 54957.5 which provided for the inspection and distribution of certain writings that were public records under the California Public Records Act. However, subdivision (e) of section 54957.5 provided that, "(T)his section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a legislative body of a local agency...". Thus, while prior law provided for the inspection and provision of certain writings distributed to the legislative body, it did not require the distribution of documentation from closed sessions to members of the public.

Accordingly, the Commission finds that Government Code section 54957.1, subdivisions (b) and (c), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative bodies" in Government Code section 54952 to provide copies of documentation from the closed session within the specified timelines.

Issue 2: Does the test claim legislation impose costs mandated by the state pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514?

The remaining issue is whether there are increased costs mandated by the state. Government Code section 17514 provides in relevant part the following:

Costs mandated by the state" means any *increased costs* which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975...which mandates a new program or higher

level of service within the meaning of Section 6 of Article XIII B of the California Constitution. (Emphasis added.)

In addition, section 17556 provides in relevant part the following:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

- (a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

At the May 24, 2001 hearing, the Department of Finance contended that local agencies requested the enactment of the test claim legislation and, thus, there are no costs mandated by the state. Mr. Cedrik Zemitis testified on behalf of the Department of Finance as follows:

MR. ZEMITIS: Second, local request, we would note that at the time the test claim statute was considered by the legislature, it was clear that these bills were introduced at the behest of local governments. The author of most of the bills stated for the record at the time that existing law was amended specifically at the request of local agencies. Indeed, numerous legislative committee analyses support the author.

In addition, the California School Boards Association at the time stated that clarification of the existing Brown Act will not create additional costs to local government. In addition, the California State Association of Counties and numerous other local entities all officially supported the legislation because it would simplify and clarify the Brown Act with no additional costs.

While we do not have resolutions from all of the affected local entities, which would be in the thousands literally, representatives of those entities clearly sponsored the legislation as well as reported savings and no new costs. Therefore we believe any mandate would not be reimbursable.²⁰

In response, the claimant testified that the City of Newport Beach did not request legislative authority to implement the program nor did they sponsor the test claim legislation.²¹ In

²⁰ Hearing Transcript, May 24, 2001 Commission on State Mandates Hearing, page 14, line 25; page 15, lines 1-25; page 16, lines 1-7.

²¹ Hearing Transcript, May 24, 2001 Commission on State Mandates Hearing, page 29, lines 15-21.

addition, there is no evidence in the record of a resolution from any governing body of a local agency requesting authorization to implement the test claim legislation. Therefore, the Commission finds that Government Code section 17556, subdivision (a) does not apply in this test claim.

Further, section 17556, subdivision (e) provides that the commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

The Department of Finance contends that while chapters 1136 and 1137 may have resulted in reimbursable state-mandated activities pertaining to certain notification requirements, these chapters may also result in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. The Department also contends that the test claim legislation results in cost savings to local governments by simplifying and clarifying the Brown Act. The Department did not comment on the new closed session requirements of the test claim legislation.

The original claimant, the County of Santa Clara, submitted a declaration to support their contention that the test claim legislation resulted in an increase in costs incurred by several County departments. Steve Conrad, SB 90 Coordinator for the County of Santa Clara declared on December 28, 1994 that an additional \$560 will be incurred per year by Santa Clara county to include closed session items on the agenda, and that an additional \$2,200 will be incurred per year by Santa Clara county to record closed session discussions in order to report in open session the items discussed in closed session, and that an additional \$6,300 will be incurred per year by Santa Clara county to prepare and post an agenda for the new bodies defined as "legislative bodies" in the test claim legislation.

In reviewing the language of the test claim legislation, there is no language that provides for offsetting savings resulting in *no* net costs to the claimants, nor does the test claim legislation include any additional revenue specifically intended to fund the mandate. While the Department of Finance contends that the test claim statutes may result in offsetting savings to the claimants by limiting the agenda descriptions to "20 words or less", the Commission finds that the language of the test claim legislation does not support this conclusion. Nor has the Department provided any documentary evidence to support their contention. Former Senator Kopp contends that the legislative intent of these amendments was to simplify and clarify the Brown Act. However, no documentary evidence has been provided to support this contention. Thus, the Commission finds that Government Code section 17556, subdivision (e) does not apply in this test claim.

Therefore, the Commission finds that the test claim legislation, which requires the legislative bodies of local agencies to perform a number of additional activities in relation to the open meeting requirements of the Brown Act, imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

CONCLUSION

Based on the foregoing, the Commission concludes that the test claim legislation (Government Code sections 54952, 54954.2, 54957.1, and 54957.7) imposes a reimbursable state-mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

Open Session Requirements

<u>Activity</u>	<u>Applies To</u>
To prepare and post an agenda at least 72 hours before a regular meeting containing a brief general description of each item of business to be transacted or discussed at the meeting. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	Local Bodies created by state or federal statute. Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action. Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Closed Session Requirements

<u>Activity</u>	<u>Applies To</u>
To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	All "legislative bodies"
To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. [Gov. Code § 54957.7, subd. (a)]	All "legislative bodies"
To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). [Gov. Code § 54957.7, subd. (b)]	All "legislative bodies"
To provide copies of closed session documents as required. [Gov. Code § 54957.1, Subd. (b) and (c)]	All "legislative bodies"

The Commission further concludes that all other statutes and code sections included in this test claim do not constitute a reimbursable state-mandated program.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95814.

June 29, 2001, I served the:

Adopted Statement of Decision

Brown Act Reform, CSM 4469

City of Newport Beach, Claimant

Government Code Sections 54952, 54954.2, 54957.1, and 54957.7

Statutes of 1993, Chapters 1136, 1137 & 1138

Statutes of 1994, Chapter 32

by placing a true copy thereof in an envelope addressed to:

Mr. Glen Everroad, Revenue Manager
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658

Mr. Glen Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 25, 2000, at Sacramento, California.


VICTORIA SORIANO

Commission on State Mandates

List Date: 03/16/2001

Mailing Information

Mailing List

Claim Number	CSM-4469	Claimant	City of Newport Beach
Subject	54952, 54954.2, 54957.1, and 54957.7		
Issue	1136/93, 1137/93, 1138/93, 32/94		
	Brown Act Reform		

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Claim Number

CSM-4469

Claimant

City of Newport Beach

54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Brown Act Reform

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Finance

City Hall

Monterey CA 93940

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FAX:

Claim Number

CSM-4469

Claimant

City of Newport Beach

Subject

54952, 54954.2, 54957.1, and 54957.7

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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54952, 54954.2, 54957.1, and 54957.7

1136/93, 1137/93, 1138/93, 32/94

Brown Act Reform

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Claim Number CSM-4469 Claimant City of Newport Beach

Subject 54952, 54954.2, 54957.1, and 54957.7
1136/93, 1137/93, 1138/93, 32/94
Issue Brown Act Reform

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54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Re

Brown Act Reform

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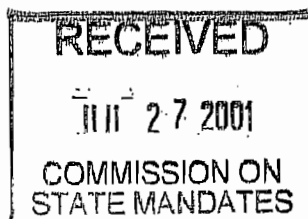


CITY OF NEWPORT BEACH

REVENUE DIVISION

3300 NEWPORT BLVD.
P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



July 26, 2001

Re: *Brown Act Reform*
Draft Parameters and Guidelines

Dear Ms. Higashi:

Pursuant to your regulations which require Draft Parameters and Guidelines be submitted within 30 days from notification of the adoption of the Statement of Decision, enclosed herewith please find the Draft Parameters and Guidelines.

Please be advised that the Draft Parameters and Guidelines for *Brown Act Reform* have been blended with those in existence for *Open Meetings Act*, which *Brown Act Reform* amended. The Draft Parameters and Guidelines have been written such that at such time as *Brown Act Reform* would be an annual claim, only one annual claim would be filed for both *Open Meetings Act* and *Brown Act Reform*. Additionally, the same methodologies employed in *Open Meetings Act* for agendas has been continued in *Brown Act Reform*. The flat rate has been further discounted using the implicit price deflator back to the 1993-94 fiscal year, which renders the flat rate for that year the sum of \$90.10 per agenda.

Because of all of the issues and hearings pertaining to *Open Meetings Act*, I would request that a prehearing conference be scheduled for *Brown Act Reform*, inviting those who worked most assiduously on *Open Meetings Act*.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Glen".

Glen Everroad
Revenue Manager

DRAFT PARAMETERS AND GUIDELINES

Chapters 1136, 1137 and 1138, Statutes of 1993
Chapter 32, Statutes of 1994
Government Code, Sections 54952, 54954.2, 54957.1, and 54957.7

Brown Act Reform

I. SUMMARY AND SOURCE OF THE MANDATE

Government Code, sections 54952, 54954.2, 54957.1 and 54957.1, require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act (Government Code, Sections 54950 *et seq.*, hereinafter referred to as the "Brown Act"). Section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session.

On May 24, 2000, the Commission adopted its Statement of Decision that the test claim legislation constitutes a reimbursable state mandated program upon local governments within the meaning of Article XIII B, Section 6 of the California Constitution and Government Code, section 17514.

II. PRIOR TEST CLAIMS

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim that added Government Code, sections 54954.2 and 54954.3 to the Brown Act. Section 54954.2 required the "legislative bodies" of local agencies for the first time to prepare and post agendas for public meetings at least 72 hours prior to the scheduled meeting. In addition, the agenda was to contain a brief description of each item to be discussed. Local agencies were also prohibited from taking action on any item that was not on the agenda. Section 54954.3 required that each agenda provide the public with the opportunity to address the legislative body during the meeting.

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim, which was based on Government Code, section 54952 and Education Code, Section 35147 addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts.

III. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, and special districts, as defined in Government Code, section 17518 are eligible claimants.

IV. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code, prior to its amendment by Statutes of 1998, Chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on December 29, 1994. Therefore, costs incurred for Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994 are eligible for reimbursement on or after July 1, 1993.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

Claimants may use actual time, standard time or the flat rate specified in section VII for costs incurred beginning in fiscal year 1993-94, for those costs related to reimbursement for agenda preparation and posting, including closed session items. Claimants must use the actual time methodology for claiming costs related to training, subsequent reporting of action taken in closed session, and providing copies of documents approved or adopted in closed session, beginning in fiscal year 1993-94.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed except as otherwise allowed by Government Code, section 17564.

Initial years' costs shall not include any costs which have been claimed or reimbursed pursuant to *Open Meetings Act*, pursuant to Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000. Annual claims, commencing with the 2001-2002 fiscal year shall include all costs for *Open Meetings Act* as well as *Brown Act Reform*.

IV. REIMBURSABLE ACTIVITIES

A. Scope of Mandate

Local agencies shall be reimbursed for the increased costs which they are required to incur to prepare and post, at a site accessible to the public and at least 72 hours before the meeting, a single agenda containing a brief general description of each item of business to be transacted or discussed at any one regular meeting of the legislative body, and citing the time and location of the regular meeting. The agenda shall also include items to be discussed in closed session, as required by law. Further, every agenda for a regular meeting must state that there is an opportunity for members of the public to address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body, subject to the exceptions stated therein. Additionally, every session which has a closed session shall include the reporting requirements and

disclosures pursuant to Government Code, Section 54957.1 of the action taken in closed session. Additionally, documentation provided from closed session within specified timelines is also included. Because of the technical requirements of the Brown Act, training on *Brown Act Reform* as well as periodic training of new members to the legislative body are also included within the scope of the mandate.

For each eligible claimant meeting the above criteria, the following cost items are reimbursable:

B. Reimbursable Activities of Government Code, Sections 54952, 54954.1, 54954.3, 54954.3, 54954.4, 54957.1 and 54957.7 pursuant to Chapter 641, Statutes of 1986, Chapter 238, Statutes of 1991, Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994.

1. Increased costs to prepare a single agenda for a regular meeting of a legislative body of a local agency containing a brief general description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session and citing the time and location of the regular meeting.

2. Costs to post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda for a regular meeting must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein.

3. Increased costs to include subsequent reporting requirements of action taken in closed session, including:

a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8;

b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation, as set forth in Section 43956.9;

c. Approval given to its legal counsel of a settlement of pending litigation at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported as specified in Section 54956.9;

d. Disposition reached as to claims discussed in closed session shall be reported as specified in Section 54956.95, including identification of the name of the claimant, the name of the local agency claimed against, substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant;

e. Action taken to appoint, employ; dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session as set forth in Section 54957; and

f. Approval of an agreement concluding labor negotiations with represented employees after the agreement is final and has been accepted or ratified by the other party, as set forth in Section 54957.6.

4. Providing copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the time lines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified.

5. Training to the members of the legislative body on the new requirements of *Brown Act Reform*, as well as training to all new members of the legislative body on the requirements of the Brown Act prior to or upon attaining office. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, all time of the trainer and legislative members is reimbursable. Additionally, all time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

VII. CLAIM PREPARATION AND SUBMISSION

Each claim for reimbursement for all costs incurred must be timely filed and set forth a listing of each open meeting agenda for which reimbursement is claimed under this mandate.

A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items

For each type or name of meeting claimed during a fiscal year, select one of the following reimbursement options. For example, all city council meetings in a given fiscal year may be claimed on only one basis: actual time, standard time or flat-rate. If standard time is selected, all city council meetings must be claimed using this basis for the entire year. However, all city council meetings could be claimed on an actual cost basis during a subsequent fiscal year.

1. Actual Time

List the meeting names and dates. Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

Counties and cities may claim indirect costs pursuant to section VII E.

2. Standard Time

a. Main Legislative Body Meetings of Counties and Cities

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", "public comments", by 30 minutes and then by the blended productive hourly rate of the involved employees.

Counties and cities may claim indirect costs pursuant to section VII E.

b. Special District Meetings, and County and City Meetings Other Than Main Legislative Body

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", "public comments", by 20 minutes and then by the blended productive hourly rate of the involved employees.

Special districts, counties and cities may claim indirect costs pursuant to section VII E.

c. School and Community College Districts and County Offices of Education

List the meeting names and dates. For each meeting, multiply the number of agenda items times the minutes per agenda item for County Offices of Education and for districts, by enrollment size, times the blended productive hourly rate of the involved employees. The minutes per agenda item for County Offices of Education and for districts by enrollment size are:

County Offices of Education:	45 minutes
Districts:	
Enrollment 20,000 or more:	45 minutes
Enrollment 10,000 - 19,999:	15 minutes
Enrollment less than 10,000:	10 minutes

School and community college districts and County Offices of Education may claim indirect costs pursuant to Section VII E.

3. Flat Rate

List the meeting names and dates. Multiply the uniform cost allowance by the number of meetings. Using the November 30, 2000 amended Parameters and Guidelines for *Open Meetings Act* with a 1997-98 base year rate of \$100, for fiscal year 1993-94, the uniform cost allowance is \$90.10. The uniform cost allowance shall be adjusted each subsequent year by the Implicit Price Deflator referenced in Government Code section 17523.

B. Reimbursement for Training, Subsequent Reporting of Action Taken in Closed Session, and Providing Copies of Documents Approved or Adopted in Closed Session

List the meeting names and dates, or the dates of training. Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

C. Services, Equipment and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials or equipment acquired which have been consumed or expended specifically for the purposes of this mandate.

D. Fixed Assets

List the cost of fixed assets that have been acquired specifically for the purpose of this mandate. If a fixed asset is acquired for the *Open Meeting Act* and/or *Brown Act Reform* programs but is utilized in some way not directly related to the programs, only the pro-rata portion of the asset which is used for the purposes of the program is reimbursable.

E. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Cities, Counties and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall

exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the two following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

School Districts

1. School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

2. County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the State Department of Education.

3. Community colleges have the option of using (1) a federally approved rate, using the cost accounting principles from the Office of Management and Budget Circular A-21 "Cost Principles of Educational Institutions", (2) the rate calculated on State Controller's Form FAM-29C, or (3) a 7% indirect cost rate.

VIII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of and the validity of such costs. For those entities that elect reimbursement pursuant to Option 2, the standard time methodology in VII A 2,

documents showing the calculation of the blended productive hourly rate and copies of agendas shall be sufficient evidence. For those entities that elect reimbursement pursuant to Option 3, the flat-rate methodology in VII A.3, copies of agendas shall be sufficient evidence. Pursuant to Government Code, Section 17558.5, the supporting documents must be kept on file by the agency submitting the claim for a period of up to two years after the end of the calendar year in which the reimbursement claim is filed, and made available at the request of the State Controller or his agent. The blended productive hourly rate, used in claiming standard or unit time reimbursements, may be calculated by determining the percentage of time spent by persons or classifications of persons on the reimbursable activities and multiplying the productive hourly rate (including salaries, benefits and indirect costs, if not claimed elsewhere) for each person or classification of persons times the percentage of time spent by that person or classification of persons. Claimants may determine a percentage allocation for the person or classification of persons in a base fiscal year and use that percentage allocation for subsequent future years by multiplying the base year percentages times the productive hourly rate for that person or classification of persons for the fiscal year of the reimbursement claim.

For example, a city manager may determine that the percentage of time spent on the reimbursable activities by various classifications in a base year of fiscal year 1998-99 was as follows:

City Manager	17%
City Attorney	15%
City Clerk	36%
Department Managers	9%
Secretaries	23%
Total	100%

The city determines that the productive hourly rate (salaries, benefits, and indirect costs) for fiscal year 2000-01 for each classification are as follows:

	Salary	Benefits	Indirect Cost Rate	Indirect Costs	Productive Hourly Rate
City Manger	\$60	\$12	29%	\$13	\$85
City Attorney	\$55	\$10	30%	\$15	\$80
City Clerk	\$40	\$8	31%	\$12	\$60
Department Manager	\$45	\$9	30%	\$11	\$65
Secretaries	\$18	\$5	25%	\$7	\$30

The blended productive hourly rate for fiscal year 2000-01 is determined by multiplying the percentages in the base year times the productive hourly rate in the fiscal year claimed, and adding the totals, as follows:

City Manager	17%	\$85	\$14.25
City Attorney	15%	\$80	\$12.00
City Clerk	36%	\$60	\$21.60
Department Managers	9%	\$65	\$ 5.85
Secretaries	23%	\$30	<u>\$ 6.90</u>
Total	100%		\$60.80

The city's claim would be determined by multiplying the blended productive hourly rate times the minutes per agenda item times the number of agenda items.

IX. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings that the claimant experiences, as a direct result of this mandate, must be deducted from the costs claimed. In addition, reimbursement for this mandate from any other source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

X. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant will be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.

XI. PARAMETERS AND GUIDELINES AMENDMENTS

Any eligible claimant or state agency may petition the Commission to amend the standard time and flat rate provisions stated herein. Pursuant to Title 2, California Code of Regulations, section 1183.2, parameters and guidelines amendments filed before the deadline for initial claims as specified in the claiming instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15, following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.



DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

GRAY DAVIS, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

August 17, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

Pursuant to your letter of August 2, 2001, the Department of Finance has reviewed the Proposed Parameters and Guidelines submitted by the City of Newport Beach (claimant). The Proposed Parameters and Guidelines pertain to the "Statement of Decision" adopted by the Commission on State Mandates (Commission) on June 28, 2001, for the test claim Brown Act Reform, CSM 4469.

As the result of our review of the Proposed Parameters and Guidelines, we have concluded that the proposal does not fairly reflect the Commission's "Statement of Decision" on the test claim that was adopted on June 28, 2001, and recommend the changes described below to make the proposal reflective of the decision.

The cost items identified in Section IV, B3 are the increased costs to include subsequent reporting requirements of action taken in a closed session meeting of a legislative body. The Commission's adopted Statement of Decision does not identify these reporting requirements as reimbursable activities. Therefore, Section IV, B3 should be deleted from the Proposed Parameters and Guidelines.

The cost items identified in Section IV, B5 are costs for training members of legislative bodies on the requirements of the test claim Brown Act Reform, CSM 4469. The Commission's adopted Statement of Decision does not identify these reporting requirements as reimbursable activities. Therefore, Section IV, B5 should be deleted from the Proposed Parameters and Guidelines.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your August 2, 2001, letter have been provided with copies of this letter via either United States mail or, in the case of other State agencies, interagency mail service.

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**COMMISSION ON
STATE MANDATES**

Ms. Higashi
August 17, 2001
Page Two

If you have any questions regarding this letter, please contact Cedrik Zemitis, Principal Program Budget Analyst at (916) 322-2263 or Jim Lombard, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,


SHELLEY MATEO
Program Budget Manager

cc: Attached list

PROOF OF SERVICE

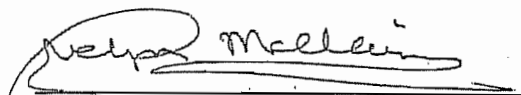
Test Claim Name: Brown Act Reform
Test Claim Number: CSM 4469

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8 Floor, Sacramento, CA 95814.

I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Sacramento, California; and (2) to State agencies in the normal pickup location at 915 L Street, 8 Floor, for interagency mail service, addressed as to the attached list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Ms. Evelyn McClain

Sacramento August 17th 2001
Place and Date Declaration was Executed

**RESPONSE TO DEPARTMENT OF FINANCE
BROWN ACT REFORM**

DRAFT PARAMETERS AND GUIDELINES

Chapters 1136, 1137 and 1138, Statutes of 1993
Chapter 32, Statutes of 1994
Government Code, Sections 54952, 54954.2, 54957.1, and 54957.7

This response is to the letter of the Department of Finance to Paula Higashi from Shelley Mateo, dated August 17, 2001, commenting upon the Draft Parameters and Guidelines.

The first cost item to which the Department of Finance objects is the reporting out requirement from Closed Sessions. The first page of the Statement of Decision states the background and findings of the Commission, which state, in pertinent part:

"The test claim legislation, Government Code sections 54952, 54954.2, 54957.1 and 54957.7, requires the "legislative bodies" of local agencies [footnote omitted] to comply with certain changes to the Ralph M. Brown Act (Gov. Code § 54950 et seq., hereinafter referred to as the Brown Act or the Act). [Footnote omitted.] Section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and, section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session."

Thus, from the very beginning, the Commission has recognized the requirements to "report out" certain actions taken in closed session.

Furthermore, there is a lengthy discussion (commencing at page 13) of the various requirements now imposed on the conduct of closed sessions, including the reporting out requirements. The Commission specifically acknowledges that Section 54957.1, subdivision (a) requires the legislative body to publicly report, either orally or in writing, various actions and votes taken in closed session, and then the Statement of Decision proceeds to list, at length, the various items which must be disclosed. (*See, Statement of Decision*, commencing at page 15.)

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**COMMISSION ON
STATE MANDATES**

Accordingly, the City of Newport Beach respectfully submits that the Department of Finance is in error when it states that the Statement of Decision "does not identify these reporting requirements as reimbursable activities."¹

The second issue with which the Department of Finance takes issue is the issue of costs for training members of legislative bodies on the requirements of the Brown Act. The objection then goes on to state: "The Commission's adopted Statement of Decision does not identify these reporting requirements as reimbursable activities." It is believed that the Department of Finance stated its objection to the training component erroneously.

However, in order to address any objections the Department of Finance may have to the training component, the following should be noted. At the hearing on the test claim at the May 24, 2001 meeting of the Commission, Ms. Stone, on behalf of the test claimant, noted that the training component would be requested as part of the Parameters and Guidelines. Not only do the minutes of the hearing reflect same, but the minutes also reflect the following: "Member Steinmeier submitted that it was appropriate for Ms. Stone to request the training component during the parameters and guidelines phase, since it is not specifically mentioned in the bill, but naturally flows from the mandate. Member Steinmeier also noted that, in her experience on a school board, this legislation did necessitate more work on the part of the people preparing the agenda to make sure the brief description was accurate so they were not challenged."

As the Commission's staff has noted previously, pursuant to 2 California Code of Regulations, Section 1183.1(a)(4), the parameters and guidelines are allowed to include "a description of the most reasonable methods of complying with the mandate."

Just as the state's agencies must comply with the Bagley-Keene Open Meeting Act (Government Code, Section 11120, et seq.), local agencies must comply with the Ralph M. Brown Act. As submitted with the test claim filing, there are substantial penalties for failure to properly comply, including having all actions taken in contravention of the Act being deemed void.

Most legislative bodies do not have members in perpetuity; rather, they are elected or appointed in terms, being any where from two, four or more years. It is not uncommon for the main legislative body of a county or city to have a change in the majority of its membership. Given the draconian penalties, which are imposed for failure to comply with the Act, the most reasonable method of assuring compliance is to have a training session for new members, and frequently a refresher for existing members.

The requirement for training was never so much needed as when the test claim legislation became effective. For the first time, many boards and commissions and other legislative bodies, which had previously operated without any requirement for compliance, now had to learn the intricacies and consequences of the failure to comply. Additionally, those legislative bodies, which had previously operated under the Brown Act, now had to learn and understand the ramifications of the changes, particularly

¹ See Letter of August 17, 2001 to Paula Higashi from Shelley Mateo.

boards of supervisors and city councils. Additionally, the consequences of the changes to closed session were also of substantial import.

When a new and technical piece of legislation which must be implemented by lay persons is enacted, a necessary consequence is the training of those individuals in its provisions. This is a continuing obligation when, given the nature of legislative bodies, the composition changes on a regular basis.

CERTIFICATION

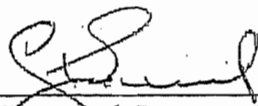
DECLARATION OF GLEN EVERROAD

I, Glen Everroad, make the following declaration under oath:

I am the Revenue Manager for the City of Newport Beach, and as part of my duties, I filed the substitution of test claimant. Also, as part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

That I have reviewed the Response to Department of Finance, Brown Act Reform, Draft Parameters and Guidelines, and based upon my information and belief, I believe it to be true and correct, and hereby certify same.

I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true. This declaration is executed this 10 day of September 2001, at Newport Beach, California.



Glen Everroad, Revenue Manager

DECLARATION OF SERVICE

State of California
County of Sacramento

I am at all times herein mentioned, over the age of eighteen years, and not a party to nor interested in the within matter. I am employed by DMG-MAXIMUS, INC. My business address is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841, County of Sacramento, State of California.

That on the 12th day of September, 2001, I served the Response to Department of Finance, *Brown Act Reform*, Draft Parameters and Guidelines, CSM-4469, on the interested parties by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United State mail at Sacramento, California, addressed as set forth in the Attachment 1, attached hereto and incorporated herein by reference.

That I am readily familiar with the business practice of DMG-MAXIMUS, INC. for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United State mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 12th day of September, 2001 at Sacramento, California.


Declarant

ATTACHMENT 1

Mr. James Lombard, Principal Analyst (A-15)
Department of Finance
915 L Street, Room 8020
Sacramento, CA 95814

Ms. Carol Berg, Ph.D.
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Mr. Paul Abelson
County of Contra Costa
Auditor-Controller's Office
625 Court Street, Room 103
Martinez, CA 94553

Ms. Chris Cetti
County of Sacramento
General Accounting
700 H Street, Room 4650
Sacramento, CA 95814-1276

Mr. Ram Vankatesan
SB-90 Coordinator
County of Santa Clara
70 West Hedding Street
2nd Floor, East Wing
San Jose, CA 95110

Mr. Glenn Engle
State Controller's Office
3301 C Street, Room 501
Sacramento, CA 95814

Mr. John Logger
County of San Bernardino
Office of the Auditor/Controller
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

Mr. James B. Lindholm, Jr.
County Counsel
County of San Luis Obispo
County Government Center, Room 386
San Luis Obispo, CA

Mr. Jim Cunningham
San Diego Unified School District
4100 Normal Street, Room 2243
San Diego, CA 92103-2682

Mr. Ernie Silva
League of California Cities
1400 K Street
Sacramento, CA 95814

Mr. Andy Glass, Accounting Manager
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Ms. Patricia Healy
City of Los Angeles
Office of the City Clerk
City Hall, Room 395
Los Angeles, CA 90012

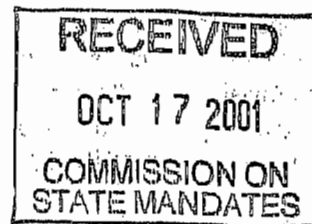
Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Richard Whitmore, Deputy Superintendent
Department of Education
Administration Branch
721 Capitol Mall, Room 524
Sacramento, CA 95814



LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

October 15, 2001



Ms. Paula Higashi, Executive Director
 Commission on State Mandates
 980 Ninth Street, Suite 300
 Sacramento, California 95814

PAUL C. MINNEY
 JAMES E. YOUNG
 MICHAEL S. MIDDLETON
 DANIEL I. SPECTOR
 LISA A. CORR
 VDA J. McKECHNIE
 DAVID E. SCRIBNER
 PHILLIP MURRAY
 JESSICA J. HAWTHORNE

Re: **Comments on Claimant's Proposed Parameters and Guidelines**
Brown Act Reform, CSM 4469
 City of Newport Beach, Claimant
 Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
 Statutes of 1993, Chapters 1136, 1137, and 1138
 Statutes of 1994, Chapter 32

Dear Ms. Higashi:

On July 26, 2001, the City of Newport Beach (claimant) submitted its Proposed Parameters and Guidelines for the *Brown Act Reform* Test Claim. In its filing, the claimant proposes to consolidate the Parameters and Guidelines for the *Open Meetings Act* and *Brown Act Reform* Test Claims. On August 17, 2001, the Department of Finance (DOF) submitted comments on the claimant's Proposed Parameters and Guidelines. DOF contends that Commission's Statement of Decision adopted on June 28, 2001 does not support several activities included in the claimant's Proposed Parameters and the Guidelines. Mandated Cost Systems, Inc. (MCS) submits these comments to address DOF's comments and the exclusion of school districts as eligible claimants under the claimant's Proposed Parameters and Guidelines.

Section IV, Subdivision B(3) Activities Not Included in Commission's Statement of Decision

DOF states:

"The cost item identified in Section IV, B3 are the increased costs to include subsequent reporting requirements of action taken in a closed session meeting of a legislative body. The Commission's adopted Statement of Decision does not identify these reporting requirements as reimbursable activities. Therefore, Section IV, B3 should be deleted from the Proposed Parameters and Guidelines."¹

¹ Department of Finance comments dated August 17, 2001 at page 1.

The Commission's Statement of Decision provides that the activities associated with reconvening in open session before adjournment to report actions/votes taken in closed session pursuant to Government Code section 54597.1, subdivisions (a)(1)-(4), and (6) are reimbursable. Therefore, the Commission should remove B.3., subdivision (e), which would provide reimbursement for activities associated with reporting any action taken and any roll call vote to appoint, employ, or dismiss a public employee – an activity the Commission determined to be required under prior law.

Section IV, Subdivision B(5) Activities Not Included in Commission's Statement of Decision

DOF states:

"The cost items identified in Section IV, B5 are costs for training members of legislative bodies on the requirements of the test claim Brown Act Reform, CSM 4469. The Commission's adopted Statement of Decision does not identify these reporting requirements as reimbursable activities. Therefore, Section IV, B5 should be deleted from the Proposed Parameters and Guidelines."²

The Commission's Statement of Decision does not *specifically* provide for reimbursement related to training. The reason for this omission is because the provision of training is a matter of boilerplate in the Parameters and Guidelines. The Commission has long recognized that training claimant staff to perform the mandated activities is a required downstream activity that claimants must engage in to properly effectuate the mandated program. Therefore, the language included by the claimant in its Proposed Parameters and Guidelines is appropriate based on past practices of the Commission.

Omission of "School Districts" From the "Eligible Claimants" Section

In its Statement of Decision for the *Brown Act Reform* Test Claim, the Commission found that the test claim legislation imposed additional activities upon "legislative bodies" of "local agencies." Specifically, legislative bodies must perform new activities related to the preparation and posting of agendas for open session meetings, include descriptions of items discussed during closed session, disclose in an open meeting, before and after a closed session, the items to be discussed and those that were discussed, and provide copies of closed session documents as required.

The claimant's Proposed Parameters and Guidelines provide that eligible claimants are limited to:

"Counties, cities, a city and county, and special districts, as defined in Government Code, section 17518. . . ."³

MCS views this as a simple oversight by the claimant for two reasons. First, the most recent *Open Meetings Act* Parameters and Guidelines properly list "school districts" as eligible claimants.⁴ Second, the Commission clearly considered school districts as an eligible claimant for the activities outlined in the *Brown Act Reform* Test Claim.

² *Ibid.*

³ Claimant's Proposed Parameters and Guidelines at page 1.

⁴ See November 30, 2000 version of the *Open Meetings Act* Parameters and Guidelines at page 1.

On page 1 of the Statement of Decision, the Commission finds:

"The test claim legislation, Government Code sections 54952, 54954.2, 54957.1 and 54957.7, requires 'legislative bodies' of local agencies (footnote omitted) to comply with certain changes to the Ralph M. Brown Act (Gov. Code § 549500 et seq.). . . ."

In footnote 1 on page 1, the Commission recognized that the Ralph M. Brown Act defines "local agency" to include a county, city, city and county, town, *school district*, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency. As such, the activities imposed upon "legislative bodies" of any "local agency" impose activities upon all entities defined in the Ralph M. Brown Act, which includes school districts. Moreover, the fact that the "Conclusion" section of the *Brown Act Reform* Statement of Decision provides that the test claim legislation imposes reimbursable activities upon local governments is not fatal to the inclusion of school districts as eligible claimants in the Parameters and Guidelines. Since the Commission's Statement of Decision provides for the proper definition of a "local agency" under the Ralph M. Brown Act, the "Eligible Claimants" section of the Parameters and Guidelines may include similar language. Parameters and Guidelines are developed from the Statement of Decision *as a whole*, not simply from the "Conclusion" section.

Therefore, MCS suggests including the "Eligible Claimants" language from the *Open Meetings Act* Parameters and Guidelines in the *Brown Act Reform* Parameters and Guidelines as outlined below:

III. ELIGIBLE CLAIMANTS

Any city, county, school or special district that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

Providing this version of the "Eligible Claimants" definition is consistent with both the *Open Meetings Act* Parameters and Guidelines and the Commission's Statement of Decision on the *Brown Act Reform* Test Claim.

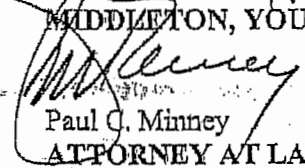
* * *

If you have questions or comments concerning this submittal, please feel free to contact me at (916) 646-1400.

Sincerely,

LAW OFFICES OF SPECTOR,

MIDDLETON, YOUNG & MINNEY, LLP


Paul C. Minney

ATTORNEY AT LAW

Cc: Steve Smith, Mandated Cost Systems, Inc.
Mail List

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

I am employed in the county of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is 7 Park Center Drive, Sacramento, California 95825.

On October 15, 2001, I served the foregoing document(s) described as

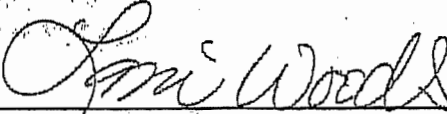
Comments on Claimant's Proposed Parameters and Guidelines
Brown Act Reform
CSM 4469

to the persons/parties listed on the attached Mailing List and to the Commission on State Mandates via first class mail. Mail list recipients receiving this via facsimile are listed below:

Mr. Ted Buckley, Long Beach Unified School District
Mr. Andy Nichols, Centration, Inc.
Mr. Arthur Palkowitz, San Diego City Schools
Ms. Pam Stone, DMG-MAXIMUS

I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 15, 2001, at **Sacramento, California.**



LANI WOODS

Claim Number

CSM-4469

Claimant

County of Newport Beach

54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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Issue

Brown Act Reform

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1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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Brown Act Reform

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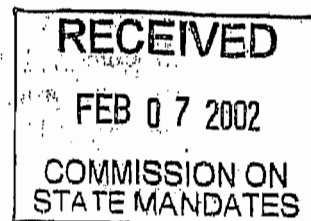
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KATHLEEN CONNELL
Controller of the State of California

February 8, 2002

Ms. Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



RE: PARAMETERS AND GUIDELINES BROWN ACT REFORM, CSM 4469
STATUTES OF 1993, CHAPTERS, 1136, 1137, & 1138
STATUTES OF 1994, CHAPTER 32
GOVERNMENT CODE (GC) SECTIONS 54952, 54954.2, 54957.1, AND
54957.7

Dear Ms. Opie:

We have reviewed the proposed amendments to the Parameters and Guidelines (P's & G's) submitted by the City of Newport Beach for the above referenced subject matter. The State Controller's Office (SCO) recommends the Commission on Mandates (COSM) review the proposed P's & G's to ensure that all reimbursable components are in accordance with the adopted Statement of Decision. However, here are some suggested amendments; additions are underlined, deletions have strike-throughs.

I. SUMMARY OF MANDATE

"Government Code, sections 54952, 54954.2, and 54957.1 require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act (Government Code, sections 54950 *et seq.*, hereinafter referred to as the "Brown Act") section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session."

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SACRAMENTO 300 Capitol Mall, Suite 1850, Sacramento, CA 95814 (916) 445-2636
LOS ANGELES 600 Corporate Pointe, Suite 1150, Culver City, CA 90230 (310) 342-5678

Section 54954.2 of the Government Code was added by Chapter 641/86 to require that the legislative body of the local agency, or its designee post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting, in a location freely accessible to the public.

Section 54954.3 was added to the Government Code by Chapter 641/86 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

"On November 30, 2000, the COSM adopted amendments to the P's & G's for the Open Meetings Act (OMA), and previously, on May 24, 2000, the COSM adopted its Statement of Decision that the test claim legislation constitutes an additional reimbursable state mandate upon local governments within the meaning of Article XI11B, Section 6 of the California Constitution and Government Code, section 17514." Therefore, the reimbursable activities of the Open Meeting Act (OMA) and the Brown Act Reform (BAR) identified in the Statement of Decision adopted by the COSM, are combined to establish the Brown Act Reform (BAR) program.

III. ELIGIBLE CLAIMANTS

"Counties, cities, a city and county and special districts as defined in G. C. section 17,518 are eligible claimants. Any city, county, school, or special district which incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs."

The schools were not identified as eligible claimants. Since this mandate combines the prior OMA program with the new BAR activities to form the BAR, schools are eligible claimants. Schools are included in the definition of a local agency as referenced in the COSM's adopted Statement of Decision.

IV. PERIOD OF REIMBURSEMENT

"...Initial years' costs shall not include any costs which have been claimed were claimable or reimbursed pursuant to Open Meeting Act pursuant to Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000." Actual costs incurred for the OMA program must be claimed as prescribed in the

Controller's Claiming Instructions No's 2000-15 and 2000-16 for local agencies and schools, respectively.

IV. V. REIMBURSABLE ACTIVITIES

- B. "Reimbursable Activities of Government Code (GC), Sections 54952, 54954.1, 54954.2, 54957.1 and 54957.7 pursuant to Chapter 641, Statutes of 1986, Chapter 238, Statutes of 1991, Chapters 1136, 1137, and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994.

The reimbursable activities for the OMA and for the BAR have been separated to clearly identify the reimbursement activities that may be filed as initial claim reimbursable activities.

Open Meetings Act Reimbursable Activities

1. Increased costs to prepare a single agenda for a regular meeting, of a legislative body of a local agency, containing a brief general description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session and citing the time and location of the regular meeting. (GC section 54954.3)
2. Costs to post a single agenda 72 hours before a meeting, in a location freely accessible to the public. Further, every agenda for a regular meeting must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (GC section 54954.2)

Brown Act Reform Reimbursable Activities

1. "Increased costs to includes subsequent reporting requirements of action taken in closed session, including items as follows:
 - a. Approval of an agreement concluding real estate negotiations as specified in GC section ~~54956.8~~ 54957.1;

The GC section is changed to be consistent with the COSM's Statement of Decision.

- b. "Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation, as set forth in GC section ~~43956.9~~ 54957.1."

The GC section 54957.1 not 43956.9 was identified as the reimbursable code section for this activity.

- c. "Approval given to its legal counsel of a settlement of pending litigation at any stage prior to or during a judicial or quasi-judicial proceeding, shall be reported as specified in GC section ~~54956.0~~ 54957.1;"

The GC section 54957.1 not 54956.0 was identified as the reimbursable code section for this activity within the COSM's adopted statement of decision.

- d. "Disposition reached as to claims discussed in closed session shall be reported as specified in Section ~~54956.95~~ GC section 54957.1;"

The GC section 54957.1 not 54956.95 was identified as the reimbursable code section for this activity within the COSM's adopted Statement of Decision.

- e. ~~"Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session as set forth in Section 54957; and"~~

This activity should be deleted as reimbursable since the COSM's Statement of Decision states the COSM determined this activity to be required under prior law.

VII. CLAIM PREPARATION AND SUBMISSION

- B. "Reimbursement for Training, Subsequent Reporting of Action Taken in Closed Session, and Providing Copies of Documents Approved or Adopted in Closed Session

List the meeting names and dates, or the dates of training. Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits."

The proposed P's & G's provide reimbursement for training and state that names and dates of training and description of activities should be provided while the test claimant has not identified what training activities are necessary for this mandate. The reasonable and necessary training reimbursable activities should be identified to provide clarification of allowable training activities.

E. Indirect Costs

"Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan."

Cities, Counties, and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an Indirect Cost Rate Proposal (ICRP), both the direct costs (as defined and described in OMB Circular A-87, Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87, Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the two following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87, Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate, which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 (Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the divisions or sections' total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate, which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage, which the total amount allowable indirect costs bears to the base selected.

Compensation for indirect costs is eligible for reimbursement. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective, and cannot be readily identified with a particular final cost objective, without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefit cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to the Office of Management and Budget (OMB) Circular A-87.

School Districts

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate, provisionally approved by the California Department of Education.

County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate, provisionally approved by the California Department of Education.

The indirect cost rate language is amended to include indirect cost reimbursement provisions for school districts and county offices with the most recent language adopted by the COSM.

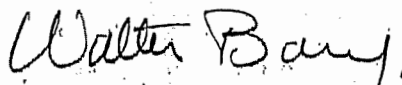
Ms. Shirley Opie

-7-

February 6, 2002

If you have any questions, please contact Ginny Brummels at (916) 324-0256.

Sincerely,

A handwritten signature in cursive script that reads "Walter Barnes".

WALTER BARNES

Chief Deputy Controller, Finance

WB:GH:glb

PROOF OF SERVICE BY MAIL

CSM – 4469

I, the undersigned, declare as follows:

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and not a party to the within action. My place of employment and business address is 3301 C Street, Suite 500, Sacramento, California 95816.

On February 6, 2002, I served the attached recommendation of the State Controller's Office by placing a true copy thereof enclosed in a sealed envelope addressed to each of the persons named below at the addresses shown and by depositing said envelopes in the United States mail at Sacramento, California, with postage thereon fully prepaid.

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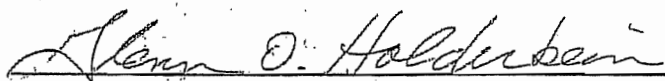
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Newport Beach, CA 92659-1768

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 6, 2002, at Sacramento, California.



Glenn O. Holderbein

SUPPLEMENTAL DECLARATIONS
IN SUPPORT OF CLAIMANT'S
PARAMETERS AND GUIDELINES

Brown Act Reform

Chapters 1136, 1137 and 1138, Statutes of 1993

Chapter 32, Statutes of 1994

As shown from the attached declarations, the membership of boards and commissions do not remain static over time. Rather, as membership changes and memories wane, additional training of the board members is given. Various entities provide training on various schedules, depending upon the size of the entity, and the perceived need for training.

The penalties for violation of the Brown Act are onerous: the actions taken are avoidable. Because of the inherent liability which may attach to the entity, prevention by way of education is the most valuable tool.

Most of the members of various boards and commissions are not attorneys. Thus, training is imperative in order to keep these lay persons aware of the technical requirements of the Brown Act and the significance of its violation.

RECEIVED

FEB 13 2002

COMMISSION ON
STATE MANDATES

DECLARATION OF KATHLEEN BALES-LANGE
IN SUPPORT OF CLAIMANT'S
PARAMETERS AND GUIDELINES
Brown Act Reform
Chapters 1136, 1137 and 1138, Statutes of 1993
Chapter 32, Statutes of 1994

RECEIVED
FEB 13 2002
COMMISSION ON
STATE MANDATES

I, Kathleen Bales-Lange, declare:

I have been the Tulare County Counsel since January 6, 1997, and have been with the office since 1981.

When the original amendments to the Brown Act were passed, which form the basis of this test claim and parameters and guidelines, substantial training was conducted on the changes.

Since I have become County Counsel, our office has conducted periodic training of elected and appointed officials in the Brown Act, together with their obligations under it.

The reason for the subsequent training is that the membership of the various boards and commissions does not remain static. The membership changes as terms expire, or there are unscheduled vacancies due to resignations or incapacity. Most of the members of these boards and commissions are not attorneys, and thus do not have any background in the Brown Act.

The requirements of the Brown Act are quite technical, and the penalties for violations are quite onerous. Thus, not only do new board and commission members need to be trained on the requirements of the Brown Act, but with the passage of time, members may forget the requirements and need refresher training.

One of the Chief Deputies, Gary de Malignon, does all of the Brown Act training. He has done training not only for the Board and various other boards and commissions, but also schools, the memorial districts and cemetery districts. Additionally, follow up is done, where materials are sent to the members.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 11th day of February, 2002 at Visalia, California.


Kathleen Bales-Lange

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FEB 13 2009

COMMISSION ON
STATE MANDATES

DECLARATION OF BARBARA BOOTH GRUNWALD
IN SUPPORT OF CLAIMANT'S
PARAMETERS AND GUIDELINES

Brown Act Reform

Chapters 1136, 1137 and 1138, Statutes of 1993
Chapter 32, Statutes of 1994

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STATE MANDATES

I, Barbara Booth Grunwald, state:

I am a Deputy County Counsel with the County of Fresno. I have been so employed since March 4, 1991. One of my duties in connection with my employment is to provide training and opinions concerning the Brown Act at the direction of the County Counsel and Assistant County Counsel.

As previously stated in my declaration provided in support of the test claim, I studied at great length the changes in the Brown Act at the time when the test claim legislation was passed, being Chapters 1136, 1137 and 1138, Statutes of 1993, and Chapter 32, Statutes of 1994. As a result of the substantial changes, the County Counsel determined that training would be performed for the Board of Supervisors, as well as Boards and Commissions subject to the Brown Act. I was responsible for assembling the materials to be provided, and true and correct copies of same were provided in support of the test claim filing. Since the changes to the Brown Act were significant, and the ramifications of violating the Act are onerous, substantial time was expended in the preparation and review of the materials for the initial training.

The initial training was somewhat lengthy, and was presented to the Board of Supervisors in open session. The training was ultimately videotaped so that individuals in need of training, who were unable to attend the session provided to their board or commission on the Brown Act could watch it at their leisure.

The membership of various Boards and Commissions, including the Board of Supervisors, does not remain static. Individuals serve the terms for which they are elected or appointed, and other individuals may replace them. Consequently, there is occasionally the need for additional training.

The County Counsel's office has therefore continued to provide such training to the various Boards and Commissions, including the Board of Supervisors, at their request. For example, last year the Board of Supervisors requested updated training, which I conducted. The board membership had changed substantially since the original training in 1994, as there were two new board members out of five.

Similarly, a new nonprofit corporation was created in Fresno County in 1996, composed of local public entities within the County and therefore subject to the Brown Act, called the I-5 Business Development Corridor, Inc. I provided Brown Act training

to ~~this~~ ^{the} board of directors of this corporation last year, as they requested an update, particularly regarding agenda posting requirements.

Additionally, at the request of Clovis Unified School District, I did a training session for the clerk to its Board.

The training which is provided takes from one to three hours. At the last training session of the Board of Supervisors, hypotheticals were used in order to clarify issues which commonly arise.

Given the changes in composition of various boards and commissions, as well as the onerous penalties which attach if the Brown Act is violated, I will provide training to the various members of boards and commissions at their request, or at the request of their executive staff. As training is provided in open session, if there is a member who previously received the training present, that person will again receive the training. Also, I envision that additional training may be needed in the future should the Brown Act be amended again in a significant manner.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 30th day of January, 2002 at Fresno, California.

Barbara Booth Grünwald
Barbara Booth Grünwald

1 DECLARATION OF THOMAS J. RIGGS
2 IN SUPPORT OF CLAIMANT'S
3 PARAMETERS AND GUIDELINES
4 Brown Act Reform
5 Chapters 1136, 1137 and 1138, Statutes of 1993
6 Chapter 32, Statutes of 1994

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7 I, Thomas Riggs, declare:

8 That I am a shareholder with the firm of LOZANO SMITH, and have been with the firm for
9 a period of 13 years. Prior to that time, I was with the Fresno County Counsel's Office. I have
10 been an attorney for over 27 years, and have concentrated in municipal law.

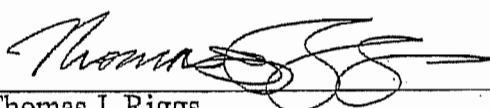
11 The firm of Lozano Smith represents various cities, school districts and local
12 governmental agencies, and its practice is that of municipal, education, and local government
13 law.

14 The composition of various city councils, boards and commissions does not remain static,
15 but rather changes due to the expiration of terms, new elections, as well as scheduled and
16 unscheduled vacancies.

17 Our firm has an ongoing Brown Act workbook which is updated on an annual basis, and
18 is distributed to our clients annually. For several of our clients, we do an annual in service
19 training in the Brown Act at an open session of the city council meeting or board. On occasion,
20 and on request, we will do a special workshop or in-service training on the Brown Act for a
21 variety of clients, and their boards or commissions.

22 The reason for the annual program on the Brown Act is that the composition of boards
23 and commissions changes continually. The ramifications of a violation of the Brown Act are
24 onerous, and thus, it is important that our clients be aware of the technical requirements of the
25 Brown Act.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct, and that this declaration is executed this 30th day of January, 2002
28 at Fresno, California.


Thomas J. Riggs

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APR 10 2002

COMMISSION ON
STATE MANDATES

PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

ORIGINAL

TIME: 9:35 a.m.

DATE: Thursday, March 28, 2002

**PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California**

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported By:

**DANIEL P. FELDHAUS
CSR #6949, RDR, CRR**

A P P E A R A N C E S

COMMISSION ON STATE MANDATES

WILLIAM SHERWOOD, Acting Chair (Vice Chair)
Representative of PHILIP ANGELIDES
State Treasurer

JOHN HARRIGAN
Representative of KATHLEEN CONNELL
State Controller

JOHN S. LAZAR
City Council Member
Turlock City Council

CAL SMITH (Chair)
Representative of B. TIMOTHY GAGE, Director
State Department of Finance

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

SHERRY WILLIAMS
Representative of TAL FINNEY, Interim Director
State Office of Planning and Research

--o0o--

COMMISSION STAFF

PAULA HIGASHI
Executive Director

CATHERINE M. CRUZ
Staff Services Analyst

SHIRLEY OPIE
Assistant Executive Director

CAMILLE SHELTON
Senior Commission Counsel

PAUL M. STARKEY
Chief Legal Counsel

I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Call to Order and Roll Call	9
II. Approval of Minutes	
Item 1 February 28, 2002	9
III. Proposed Consent Calendar	10
* Item 2 <i>(For details, see Item 2 below.)</i>	
IV. Hearings and Decisions, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Test Claims:	
Item 2 Community College District Budget and Financial Reports, Fiscal Management Reports and Financial and Compliance Audits; 97 TC-10, 11, 12; Santa Monica Community College District <i>(Consent calendar item)</i>	10
V. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8	
A. Adoption of Proposed Parameters and Guidelines	
Item 3 Brown Act Reform, CSM 4469 City of Newport Beach, Claimant	11
Item 4 Sex Offenders: Disclosure by Law Enforcement Officers, 97-TC-15 County of Tuolumne, Claimant	41

1 (A chorus of "ayes" was heard.)

2 ACTING CHAIR SHERWOOD: Opposed?

3 The consent item is approved.

4 MS. HIGASHI: I'd just like to note, for
5 purposes of the record, that the Department of Finance
6 had given me one suggested change for the remainder of
7 that test claim, which won't be on the agenda until the
8 May hearing. So for purposes of the May hearing, we'll
9 be making that correction; but it's not part of this
10 agenda item.

11 ACTING CHAIR SHERWOOD: It's not pertaining to
12 this issue today on consent?

13 MS. HIGASHI: Correct. But it is set for the
14 May hearing; and we'll make that correction.

15 ACTING CHAIR SHERWOOD: That is very good, since
16 we've already voted.

17 MEMBER STEINMEIER: We're too fast.

18 MS. HIGASHI: But it was for the May item.

19 ACTING CHAIR SHERWOOD: Did we move too quickly
20 for you?

21 MS. HIGASHI: No, it was for the May item that
22 he had given me the correction.

23 This brings us to Item 3, the Proposed
24 Parameters and Guidelines on Open Meetings Act, Brown Act
25 Reform. This item will be presented by Shirley Opie,

1 Assistant Executive Director.

2 MS. OPIE: Thank you.

3 Good morning.

4 ACTING CHAIR SHERWOOD: Good morning.

5 MS. OPIE: This item is the Proposed Parameters
6 and Guidelines for the Brown Act Reform test claim.

7 Eligible claimants that incurred increased costs
8 for preparing and posting an agenda, including
9 closed-session items for the new types of legislative
10 bodies added by Brown Act Reform, can claim reimbursement
11 beginning January 1st, 1994, which is the effective date
12 of the test claim statutes.

13 Eligible claimants that incurred increased costs
14 to apply to the closed-session requirements of Brown Act
15 Reform, specifically, to disclose in an open meeting
16 prior to holding any closed session, each item to be
17 discussed in the closed session; to reconvene in open
18 session prior to adjournment and report the actions and
19 votes taken in closed session; and to provide copies of
20 closed-session documents and claim reimbursement
21 beginning January 1, 1994.

22 Eligible claimants will have three options for
23 claiming reimbursement for the costs of preparing and
24 posting an agenda, including the closed session items.
25 Those are actual time; standard time, which is a set

1 amount per agenda item, that's based on the type of
2 claimant; or three, a flat rate per meeting.

3 The basis for the standard times and the flat
4 rate were established in amendments to the Open Meetings
5 Act Parameters and Guidelines that were adopted by the
6 Commission last November, in November 2000.

7 Only one reimbursement option can be selected
8 for each type of meeting during a fiscal year, for
9 claiming costs incurred for agenda prep and posting.

10 Eligible claimants must claim actual costs
11 incurred for subsequent reporting of actions taken in
12 closed session, providing the copies of the documents
13 that were approved or adopted, and training, regardless
14 of the reimbursement option that they choose to claim
15 costs for agenda preparation and posting.

16 Beginning with the annual reimbursement claims
17 filed for 2001-2002 fiscal year costs, all claimants will
18 claim costs for all reimbursable activities for Open
19 Meetings Act and Brown Act Reform under these Parameters
20 and Guidelines. Until that time, however, reimbursement
21 for Open Meetings Act must be claimed under that program
22 as prescribed in the State Controller's claiming
23 instructions.

24 Based on the evidence in the record, staff
25 included ongoing training as a reimbursable activity

1 because it constitutes a reasonable method of complying
2 with the mandated activities. However, it is limited to
3 training the members of only those legislative bodies
4 that hold those closed sessions; and further, to the
5 activities related to closed-session requirements.

6 Staff is proposing some clarifying changes that
7 are listed on the errata sheet. It's the pink sheet that
8 you have for this item.

9 These changes do three things:

10 One, they clarify that the legislative bodies
11 that were previously subject to the requirements to
12 prepare and post an agenda can claim reimbursement for
13 preparing closed-session items. However, they can only
14 use the actual costs or the standard time reimbursement
15 methodology.

16 Secondly, the proposed changes clarify that the
17 flat rate includes all costs for preparing and posting an
18 agenda, including closed-session agenda items. Claimants
19 that filed reimbursement claims under Open Meetings Act
20 using the flat rate cannot file another reimbursement
21 claim using the flat rate for agenda preparation of the
22 closed-session items.

23 And third, cross-references to the provisions
24 related to training are added to clarify that if the
25 training that is provided is broader than Brown Act

1 Reform closed-session requirements, only the pro rata
2 portion of the training is reimbursable. A technical
3 change is also proposed to correct a code section
4 reference.

5 Staff recommends that the Commission adopt the
6 claimant's proposed parameters and guidelines, as
7 modified by staff, which began on page 13.

8 Staff also recommends that the Commission
9 authorize staff to make any nonsubstantive, technical
10 credentials to the Parameters and Guidelines, following
11 the hearing.

12 Will the parties please ^{state}~~stated~~ your names for
13 the record?

14 MS. STONE: Good morning, ladies and gentlemen
15 of the Commission. Pam Stone on behalf of the City of
16 Newport Beach.

17 MR. EVERROAD: Glen Everroad, City of Newport
18 Beach.

19 MR. PAULIN: Matt Paulin, Department of Finance.

20 MS. BRUMMELS: Ginny Brummels, State
21 Controller's Office.

22 MR. SILVA: Shawn Silva, State Controller's
23 office.

24 MS. GEANACOU: Good morning. Susan Geanacou,
25 Department of Finance.

1 ACTING CHAIR SHERWOOD: Thank you.

2 I think we'll follow our normal process and
3 we'll ask the claimants to address the Board, and then
4 we'll move to the Department of Finance and State
5 Controller's Office.

6 MS. STONE: Thank you very much, Mr. Chairman.

7 First of all, we'd like to thank the staff for
8 their incredible amount of effort and time that has gone
9 into this. It has not been easy, going through some of
10 the permutations; and we do concur that the only way one
11 can obtain reimbursement for closed-session items is
12 using actual time or standard times; and that if one uses
13 the flat rate, it is assumed to encompass all
14 closed-session items as well as reporting out. And that
15 is extremely clear.

16 The only difference of opinion that we have with
17 staff is concerning the training component. We believe
18 that the training component has been unfairly limited to
19 just training on closed-session items. And this is the
20 reason: As you will see from your Parameters and
21 Guidelines -- and we're working off of so many different
22 copies of this, I can't tell you which portion -- but
23 what it discusses is that, commencing January 1, 1994,
24 the amendments to the Brown Act brought into the
25 requirements of the Open Meetings Act a substantial

1 number of advisory boards and commissions that previously
2 were not subject to it, to the Brown Act, or it was
3 unclear as to whether or not they actually fell within
4 the parameters of the Brown Act.

5 I hate to go back to ancient history, but back
6 when the Brown Act Reform was passed, I was working for
7 Fresno County, in the County Counsel's office, and
8 honestly, I can't remember if I was a senior or chief
9 deputy, because I received a promotion during that period
10 of time. But it was my responsibility to go out and
11 provide training to those advisory boards that previously
12 had not been subject to the Brown Act. I remember that
13 two of the boards that I had to do, amongst others, were
14 the Mental Health Advisory Board, as well as the Drug and
15 Alcohol Advisory Board that had been created by state
16 statute.

17 I remember trying to impress upon one gentleman,
18 who was employed in education and was working on a law
19 degree, that the only way you could discuss something is
20 if it was on the agenda; and if you wanted to discuss
21 something, you had to, in fact, direct staff to place it
22 on the agenda or you could not discuss it.

23 Furthermore, that, obviously, since 1986 there's
24 been an opportunity for public comment; and a lot of
25 times, the public will come up and make a point. But,

1 obviously, your board or commission cannot make any
2 discussion of that fact unless it has been agendized.
3 And the most that staff could do -- or the Board could
4 do would be to prefer it to staff, to have it set on a
5 future agenda.

6 So although what we're requesting is to expand
7 it to those advisory boards and commissions for training
8 that were not previously required to do so.

9 I know there is some concern regarding costs.
10 Generally speaking, a lot of the members of these
11 advisory boards and commissions are volunteer positions.
12 And, therefore, there would be no costs for the
13 volunteers because they're not in paid positions. What
14 it would be is basically the time of the trainer, who
15 had to go prepare materials for this particular board or
16 commission, and tell these volunteers that, "Yes, you
17 can do this. The Brown Act says you can," or, "No, you
18 can't do this. The Brown Act says you can't."

19 And, you know, it was a substantial endeavor
20 during 1994 to explain to individuals that it's not a
21 method of not being able to accomplish what you want, but
22 being able to set it in such a manner that you can, in
23 fact, have a discussion and action items, as long as it's
24 properly agendized.

25 So in that respect, we're requesting that the

1 claimant's original terminology with respect to training,
2 which would include advisory boards and commissions which
3 were not previously subject to the Brown Act, encompassed
4 within the purview of training.

5 Thank you very much.

6 ACTING CHAIR SHERWOOD: Thank you.

7 Mr. Everroad, did you wish to make a comment?

8 MR. EVERROAD: I, too, would like to thank staff
9 for their efforts in working through this complex claim,
10 and just echo the opinion of Pam Stone that training is a
11 significant component in compliance with this Brown Act
12 and Open Meetings Act requirement; and we'd urge the
13 members to consider our situation. We have these costs,
14 and we think that, appropriately, they should be
15 reimbursed.

16 Thank you.

17 ACTING CHAIR SHERWOOD: Thank you.

18 Matt?

19 MR. PAULIN: Matt Paulin, Department of Finance.

20 We are opposed to inclusion of the training
21 based on the fact that it wasn't included in the staff's
22 Statement of Decision or the Commission's Statement of
23 Decision. So that was our grounds for opposition to
24 inclusion of the training.

25 ACTING CHAIR SHERWOOD: Thank you.

1 Shawn?

2 MR. SILVA: The Controller's office is in
3 agreement with the staff analysis. And our position on
4 the training would essentially be the same as Finance,
5 that it would be going beyond what was provided in the
6 Statement of Decision.

7 ACTING CHAIR SHERWOOD: Thank you.

8 Would staff wish to make any comments to Pam?

9 MS. SHELTON: Just a couple of comments on the
10 training, and I think Shirley wants to make a clarifying
11 comment.

12 With regard to the member training requested by
13 the claimants, they have requested training the entire
14 membership of the body on the entire Brown Act. The
15 entire Brown Act has never been the subject of the test
16 claim. The test claim is just limited to five code
17 sections, and there's only a Statement of Decision on
18 five code sections. So providing training on the entire
19 Brown Act would be going beyond the scope of this
20 Commission's Statement of Decision.

21 Also, a lot of those provisions were enacted
22 originally in 1953, so they may not even qualify for a
23 reimbursement under Article XIII, Section 6, in the first
24 place.

25 Finally, the last reason we did not recommend

1 training on the activities of preparing and posting the
2 agenda is because those activities are performed by staff
3 members, generally, and not by members of the Board.

4 ACTING CHAIR SHERWOOD: Thank you.

5 Board Members, any questions?

6 MS. SHELTON: One more. There was one more,
7 too. The Commission is not precluded from having a
8 ruling on a training issue at the P's and G's phase even
9 though it is not in the Statement of Decision.
10 Training, the Commission does have authority to include
11 activities in the Parameters and Guidelines that are
12 reasonably related to a mandated activity, so you can go
13 beyond those activities listed in the Statement of
14 Decision.

15 ACTING CHAIR SHERWOOD: Thank you. I think the
16 issue we've heard this morning have been addressed in the
17 material brought before us, so I believe all the members
18 have the pros and cons on these issues.

19 MEMBER LAZAR: I would just like to ask the
20 claimants the response to --

21 ACTING CHAIR SHERWOOD: Yes.

22 MS. STONE: I'm sorry, I didn't --

23 MEMBER LAZAR: I just wanted to ask for a
24 response to legal counsel's response to your statement.

25 MS. STONE: I would agree that our original

1 request was for all of the training on the Brown Act.

2 At this point in time what we're asking for is training
3 to those boards and commissions this were brought under
4 the Brown Act in 1994. And that is because these
5 individuals previously were not subject to it, and they
6 now have to post an agenda and they have to prepare the
7 agenda.

8 And, yes, we are aware that staff generally
9 prepares an agenda; but I have also unfortunately
10 participated in more agenda preparation meetings than I
11 care to relate in my history; and it is not uncommon for
12 board members to raise issues that they wish to have
13 addressed; because unless staff places it on the agenda,
14 your board or commission is precluded from discussing the
15 item. And so the board and commission members need to be
16 aware that if they have an issue that needs to be
17 discussed, it needs to not only be on the agenda, but the
18 terminology needs to be appropriate, such that the action
19 desired by the board or commission can actually be taken.

20 ACTING CHAIR SHERWOOD: John, any further
21 questions?

22 MEMBER LAZAR: No, thank you.

23 Go ahead, it's your turn, John.

24 MEMBER HARRIGAN: I was going to say --

25 ACTING CHAIR SHERWOOD: Mr. Harrigan?

1 MEMBER HARRIGAN: Camille, do you have any
2 response to that? I mean, they're narrowing it. If I
3 heard what you were saying, you were concerned about
4 going back to the beginning of the Brown Act, back in the
5 1950's.

6 MS. SHELTON: Well, I'm not sure that they have
7 narrowed it because they're still requesting
8 reimbursement for training the new members on the Brown
9 Act, and there has not been a Commission decision on the
10 Brown Act.

11 One thing, if you did decide to give training on
12 those two activities, which are really just limited to
13 preparing and posting an agenda, the old P's and G's for
14 the Open Meetings Act does not include a reimbursable
15 component for training. So the old legislative bodies
16 are not getting reimbursed for training but the new ones
17 would be, which could be seen as inconsistent.

18 MEMBER HARRIGAN: Thank you.

19 ACTING CHAIR SHERWOOD: Thank you.

20 MEMBER SMITH: I have a question to the staff.
21 On your comment that the Board is not prohibited on
22 considering an issue like training that's not addressed
23 in the Statement of Decision, has that occurred on a
24 regular basis in the past --

25 MS. SHELTON: Yes.

1 MEMBER SMITH: So historically, this has not
2 happened? This is not precedent-setting?

3 MS. SHELTON: That's correct, and training has
4 been approved by the Commission at the Parameters and
5 Guidelines phase.

6 MEMBER SMITH: And one follow-up, a very quick
7 question on the last discussion: The issue -- as a
8 novice to this, am I reading it correctly that the issue
9 of going back, potentially addressing issues that were
10 not initially a part of this, opens up the entire Brown
11 Act, which is more appropriately a part of a different
12 submission or claim?

13 MS. SHELTON: No. I think that would be too
14 broad. It's limited in scope at this phase. I mean, at
15 the test claim phase, there has to be ruling on the
16 activities that are expressly required by the test claim
17 statutes. Those are the activities that the Legislature
18 has adopted and enacted.

19 All the Commission can do at the Parameters and
20 Guidelines phase is to include activities that are
21 reasonably related to those expressly required activities
22 in the statute.

23 So if, for example, somebody was requesting
24 reimbursement on a part of the Brown Act which has never
25 come before the Commission, which is included in the

1 statute, that would go beyond the Commission's Statement
2 of Decision, in that case.

3 MEMBER LAZAR: So, in your opinion, there's no
4 way to fix it, to accommodate what the claimant is
5 requesting?

6 MS. SHELTON: It would have to be limited.
7 I mean, to request reimbursement on the entire -- for
8 training on the entire Brown Act would go beyond the
9 scope. I don't know how -- I guess the only way, if you
10 wanted to give them training, would be to only limit
11 training to those reimbursable activities in the
12 Statement of Decision and that's simply preparing or
13 posting the agenda, which, as I mentioned earlier, staff
14 routinely does those activities.

15 MEMBER LAZAR: What's the claimant's feeling
16 about that?

17 MS. STONE: The claimant believes that for those
18 bodies that came under in January 1 of 1994, it was very
19 incumbent that they be trained on the issue of the agenda
20 itself. And there's a real reason for that.

21 I believe that all of you -- and I apologize,
22 Mr. Smith, because we went through this at the original
23 test claim hearing -- the problems, if you violate the
24 Brown Act, is that any action that was taken by the board
25 or commission is voidable, which can result in a

1 substantial amount of liability to the board or
2 commission, sometimes to the members individually, as
3 well as to the public entity.

4 So when you were talking about training on the
5 agenda, not only are you talking about training on the
6 fact that you can only discuss that which is agendized,
7 but also that you can only take that action which is on
8 the agenda, and also the penalties for failure to comply.

9 This really is the heart of the Brown Act, when
10 you come right down to -- the heart of the Brown Act
11 being the appropriate agendizing, the fact that you have
12 to allow public members to speak, and the proper
13 methodology for addressing items in closed session; and
14 that if there is no authority for handling something in
15 closed session, you cannot go there.

16 And so this is what we believe, that if there is
17 training to the new boards and commissions on
18 reimbursable activities and the consequences for
19 violation, we'd be extremely satisfied. And it could be
20 prorated.

21 MEMBER STEINMEIER: Can I say something?

22 ACTING CHAIR SHERWOOD: Joann?

23 MEMBER STEINMEIER: I would support that.

24 It is a little unfortunate that we didn't look at
25 training the staff with those boards because those people

1 on a regular basis advise them. Perhaps through the
2 training process of the board members, though, the staff
3 either would be present and a part of that so that
4 they're all hearing the same thing, at the same time.
5 There are horror stories out there of school boards and
6 city councils who have gone afoul of this law; and
7 historically, no one ever went after them. But district
8 attorneys are now starting to take this seriously. And
9 certainly in L.A. County, there have been people actually
10 sentenced to Brown Act school, and publicly ridiculed for
11 violating the Brown Act.

12 So I think it is a serious matter. And I would
13 support the idea of adding that narrow addition of
14 training members on the proper agendizing of an item and
15 how those actions have to be displayed on an agenda in
16 order to be able to take that action at that particular
17 meeting. I do support that idea.

18 MEMBER LAZAR: Would you make that a motion?

19 MEMBER STEINMEIER: Yes, I'll move that.

20 MEMBER LAZAR: I'll second it.

21 MS. SHELTON: Can I --

22 ACTING CHAIR SHERWOOD: Sure.

23 MEMBER STEINMEIER: A clarification. I knew
24 that was coming, Camille.

25 ACTING CHAIR SHERWOOD: And also if we could

1 take any further comment from the Board before we vote on
2 that.

3 MS. SHELTON: Are you talking about then
4 training just for the new legislative bodies --

5 MEMBER STEINMEIER: Yes.

6 MS. SHELTON: -- that's become subject to the
7 Brown Act which are identified on page 27, the first
8 three bullets?

9 MEMBER STEINMEIER: Let me double-check that.

10 I believe that's what Ms. Stone is asking.

11 MS. STONE: Yes, it is.

12 MEMBER STEINMEIER: Yes.

13 MS. SHELTON: And also, is your motion for
14 one-time or ongoing training?

15 MEMBER STEINMEIER: Well, obviously, there is an
16 initial training. And then for new members to these
17 bodies, there would be additional training. And I think
18 somewhere we talked about that, new members, on some
19 other items -- new members that need to be trained.

20 MS. SHELTON: Because the recommendation at this
21 point, as far as closed-session training, the staff has
22 recommended ongoing training for that.

23 MEMBER STEINMEIER: To be consistent, ongoing
24 makes sense; is that what you're saying, Camille?

25 MS. SHELTON: It would be up to the Commission.

1 MEMBER STEINMEIER: Well, let's say "ongoing"
2 then, to be consistent with the other. If you have a lot
3 of different ones, it gets very confusing for the
4 Controller's office, as well as the claimants.

5 MS. GEANACOU: Excuse me, if the Chair will so
6 permit me, may I still make a comment on behalf of
7 Finance, please?

8 ACTING CHAIR SHERWOOD: Definitely. I thought
9 what we might do first is go to the Board members --

10 MS. GEANACOU: Very well.

11 ACTING CHAIR SHERWOOD: -- and then we'll very
12 definitely come back to you.

13 MS. GEANACOU: Thank you.

14 MEMBER STEINMEIER: So that's what it is,
15 "ongoing."

16 ACTING CHAIR SHERWOOD: Board Members? John?

17 MEMBER HARRIGAN: Thank you.

18 If we accepted this motion, is it something that
19 the administrative bodies can interpret and follow? I'm
20 addressing the Controller's office.

21 MS. BRUMMELS: I would like to think that those
22 legislative bodies would need to be more clearly defined
23 within the Parameters and Guidelines, so that there would
24 be ease, and it would be clearly identified as to which
25 bodies would be eligibility and for which time period

1 that training would be allowable.

2 MEMBER HARRIGAN: Okay.

3 ACTING CHAIR SHERWOOD: Any further comment from
4 the Board?

5 The Department of Finance?

6 MS. GEANACOU: Yes, thank you. Susan Geanacou,
7 Department of Finance.

8 If the Commission is inclined to include
9 training in the parameters and guidelines, Finance would
10 request that the training be limited to a one-time basis,
11 as noted by staff, as opposed to training provided on an
12 ongoing or refresher basis. Simply that persons coming
13 under this requirement be provided -- be limited to
14 one-time training, and that it be one time and not
15 ongoing or refresher training.

16 ACTING CHAIR SHERWOOD: Thank you.

17 MEMBER HARRIGAN: Can I ask for clarification?

18 ACTING CHAIR SHERWOOD: Yes.

19 MEMBER HARRIGAN: When you said "one time,"
20 you're not talking about one time at this point; but as
21 new members would come on to the Commission, that there
22 would be training at that point?

23 MS. GEANACOU: That's correct. Each person who
24 would be expected to be aware of this would receive
25 training on a time-appropriate basis, depending on when

1 they came on board, so to speak, yes.

2 MEMBER HARRIGAN: Thank you.

3 MEMBER STEINMEIER: I have a comment,
4 Mr. Chair, to follow up on John's direction.

5 ACTING CHAIR SHERWOOD: Yes, Joann?

6 MEMBER STEINMEIER: As a practical matter, when
7 new members come on to any kind of a body, it would cost
8 the same amount to train all of them on an ongoing basis
9 as it would be to add one or two more people each time.
10 There really would be no cost difference, just doing one
11 training session. And so -- I don't know how to phrase
12 this -- but the reality is that it wouldn't be any more
13 expensive to do it on an ongoing basis than it would be
14 as new members come on board. Because there is usually a
15 pretty good turn-over. So it would just happen every
16 time there are new members, you get the training again;
17 and everybody gets the training again, but not every year
18 for every person.

19 So as a practical matter, there really is no
20 cost difference and probably would be more effective.

21 ACTING CHAIR SHERWOOD: Pam?

22 MS. STONE: Thank you very much, Mr. Sherwood.

23 Mr. Harrigan, a lot of boards and commissions
24 have volunteers, in which event, the only cost you have
25 is for the trainer; because, in large part, these

1 particular training sessions are agendized and heard in
2 open session because it's one place where, obviously, in
3 accordance with the Brown Act, you can, in fact, have
4 everybody present; it's agendized; you provide the
5 training; it's open to the public the knowledge.

6 So when you have board and commission members
7 that are volunteers, it costs absolutely nothing because
8 all we're really going to be getting is the cost of the
9 trainer. That's the only time you're going to have
10 situations is when you have board and commission members
11 who are on staff because of their position, in which case
12 you would have their salaries.

13 With regard to Ms. Brummels' request that you
14 have some way of determining where all these boards and
15 commissions are, unfortunately, every jurisdiction has
16 different boards and commissions. Obviously, there's
17 some that you're required to have by statute. But the
18 only thing I have seen in the course of going through the
19 Open Meetings Act and all the incorrect claims in Open
20 Meetings Act, is that there were no two jurisdictions
21 that were similar.

22 And I understand, Ms. Brummels, either the city
23 clerk, county counsel, the executive department of the
24 school will have a listing of the boards and commissions,
25 but not always. And that's my only comment in response

1 to that.

2 ACTING CHAIR SHERWOOD: Thank you, Pam.

3 MS. STONE: Thank you, sir.

4 ACTING CHAIR SHERWOOD: I would like to ask
5 staff to comment on this. I think Ms. Brummels' comments
6 are to the point because we want to be as exact as
7 possible. In other words, we need to be more exact as we
8 move into the future.

9 My tendency is to vote for the staff's
10 recommendation, as it stands at the moment. If I were
11 going to move towards voting for an amended case, I would
12 want to be sure that what we're doing, number one, is
13 legal; number two, that it's framed very, very tightly.
14 So I think the amendment, Joann, would have to be really
15 very specific in nature.

16 But once again, I would like to hear from staff
17 as to whether this motion, frankly, would be within our
18 purview.

19 MS. SHELTON: Well, the motion is within your
20 purview because you would be finding that training
21 members on posting and preparing an agenda would be
22 reasonably related to those two activities. You can make
23 that motion. I mean, it's something within your
24 authority to do.

25 ACTING CHAIR SHERWOOD: And within the Statement

1 of Decision?

2 MS. SHELTON: Yes, if it's limited to those two
3 activities, it would be limited to preparing or posting
4 the agenda.

5 ACTING CHAIR SHERWOOD: Okay.

6 MS. SHELTON: As far as identifying bodies, they
7 already are identified in the P's and G's as those three
8 that Joann mentioned, you know, the local bodies created
9 by state and federal statute, et cetera. So those would
10 be identified. And then it would have a reimbursement
11 period beginning January 1, 1994.

12 One thing, if that happens, though, just realize
13 that the legislative bodies that were subject to the
14 Brown Act before, under the Open Meetings Act, would not
15 be receiving training.

16 ACTING CHAIR SHERWOOD: That, I believe, has
17 been made clear.

18 Staff, any further comments?

19 MS. SHELTON: No.

20 ACTING CHAIR SHERWOOD: Mr. Burdick, I notice
21 you've wandered up to the table, which is not unusual.

22 MR. BURDICK: Thank you very much, Chairman
23 Sherwood and Members of the Board.

24 I thought maybe I could put this into a little
25 better context for the state members, because I don't

1 think you quite really understand the magnitude of this
2 particular bill. This was in one of the most significant
3 pieces of legislation before local agencies in the '93-94
4 year, because it made a wide range of changes to the
5 Ralph M. Brown Act that was amended in 1986, your
6 original mandate. And as a result of that, the League of
7 Cities and other associations actually prepared published
8 booklets to people to explain the differences.

9 So if you look at it kind of like the
10 Bagley-Keene Act that you're under, and there was a major
11 rewrite and change to that, the question would be: Would
12 you just talk about the changes, or do you show within
13 the Bagley-Brown Act (sic) what stayed and what didn't?

14 And that's exactly what happened in local
15 government, is that when you do this, you have to kind of
16 go through the process and say, you know, "This didn't
17 change. This did change." But this was a very
18 comprehensive and expansive change to the Brown Act.
19 It was not an effort just to make a few minor changes.
20 This was the work of the Attorney General, of a number of
21 state agencies, obviously the taxpayers' association, the
22 newspaper publishers and all the local agencies. And
23 this was a very long and tedious process to try to
24 clarify the 1986 amendment, which is the current mandate.

25 So this was not just a small, little bill out

1 there that made a few changes. This made a number of
2 changes and clarifications. And in order to do the
3 training on this -- and I participated in some sessions
4 as a presenter on some of these sessions -- I can tell
5 you, you can't just say, you know, kind of, "This is what
6 it is." You have to kind of explain what was there
7 before, what is there now, what has changed, what hasn't
8 been changed.

9 So this is not -- the training on this, I don't
10 think you can differentiate it from saying "You can only
11 talk about the changes"; I think you have to explain
12 whole law process, what changed and how it relates, one
13 to the other. I just don't think there is any reasonable
14 or practical way that anybody actually did training where
15 they didn't discuss other parts of the statute.

16 It could also be made analogous to the change
17 when this went from the Commission on State Mandates,
18 under the old Board of Control, to the Commission on
19 State Mandates. A lot of that language remained the same
20 and some of it was changed.

21 But I think the members and the people that went
22 through there had to go through the whole process to look
23 at what was new, what was old, what was in place. You
24 couldn't just talk about, you know, what may have changed
25 in that because there was a lot of changes. But I would

1 grant that if you went back and looked at those two
2 items, that probably at least half of the language is
3 probably verbatim from pre-'85, and half of it has
4 changed. And so I think when you do that kind of
5 training, you do have to cover the whole subject.

6 And I don't think there's any way to just say
7 that we're just going to train on those specific pieces
8 that were changed. I think you have to address the whole
9 act because of the comprehensive nature of this
10 particular statute.

11 ACTING CHAIR SHERWOOD: Thank you.

12 Camille?

13 MS. SHELTON: Just a comment. A reminder that
14 the whole act has never been brought before the
15 Commission. There isn't a Commission decision on the
16 whole Brown Act.

17 ACTING CHAIR SHERWOOD: Thank you.

18 Joann, you had a motion and a second.

19 MEMBER STEINMEIER: Ms. Stone has more thing.
20 I see fingers.

21 MS. STONE: Mr. Sherwood, I have a compromise
22 that I would like to tender and offer, to see if this
23 makes sense. And, I don't know, those of you who were
24 present at the original test claim hearing, part of your
25 materials, I did show you the training materials

1 I believe used not only by the League of Cities but by
2 Fresno County that showed side-by-side comparisons of the
3 old law and new law.

4 It could probably be, as a compromise, I would
5 like to offer 50 percent of the training that is done to
6 new boards and commissions, and I think that would take
7 care of an issue of having to determine what the pro rata
8 portion is. So instead of doing pro rata portion, just
9 do a flat 50 percent of training of the new boards and
10 commissions, that come in since 1994. I think that would
11 take care of the issue and would make it easier for the
12 State Controller's office -- I mean, this is just an
13 offer in compromise.

14 MEMBER LAZAR: It's like the Legislature, huh?

15 ACTING CHAIR SHERWOOD: Would staff like to add
16 a comment to that?

17 MS. SHELTON: You have the authority to accept
18 it. You might want to hear from the parties at the
19 table. But you would be finding that the 50 percent
20 would be reasonably related to the Commission's Statement
21 of Decision on reimbursable activities.

22 ACTING CHAIR SHERWOOD: I don't think we have
23 enough information to know that 50 percent makes any
24 sense. And, quite frankly, we still get back to the
25 issue of one-time posting and the agenda, which,

1 Mr. Burdick, I think would like to see it go to a much
2 wider interpretation than that, which I don't see.

3 Joann -- do we have anyone else that wishes to
4 speak to the issue?

5 Shawn?

6 MR. SILVA: A question. Our concern here is,
7 I think, more procedural; and that is, we're starting to
8 talk about lots of different language and options and
9 proposals; and we have nothing on paper. This is all
10 verbal and off the cuff. And I believe the concern would
11 be that we're not really sure where we're going, and that
12 something in writing -- potentially putting this off for
13 another hearing with something in writing from claimants
14 of exactly what, in writing, their proposal is so that
15 the state agencies can review it and make an intelligent
16 comment, and that that can come before the Commission and
17 we would have something in writing for which you could
18 all have prepared for and know what we're voting on.

19 ACTING CHAIR SHERWOOD: Thank you, Shawn.

20 MEMBER SMITH: The representative addressed the
21 issue I was going to ask them about.

22 ACTING CHAIR SHERWOOD: I think that's very
23 true; and I'll continue this item for that information.
24 Right now, of course, we have a motion and a second
25 before us. And I don't know what Ms. Steinmeier wishes

1 to do on that. Or, of course, we could always take a
2 motion on the staff's report as it stands on the
3 P's and G's.

4 MEMBER STEINMEIER: I'd like to withdraw my
5 motion and continue this, so we have time to really
6 consider some specific language; and I hope Ms. Stone
7 will ~~to~~ participate in that.

8 MEMBER LAZAR: I'll withdraw my second.

9 ACTING CHAIR SHERWOOD: Fine.

10 Ms. Higashi, do you have a comment?

11 MS. HIGASHI: May I suggest procedurally that
12 someone make a motion to either amend Ms. Steinmeier's
13 original motion and --

14 MEMBER HARRIGAN: I'll make a motion to amend
15 Ms. Steinmeier's motion by asking for a deferral of this
16 item until --

17 MS. HIGASHI: Until the next agenda.

18 MEMBER HARRIGAN: -- the next subsequent
19 meeting.

20 MEMBER STEINMEIER: Ms. Steinmeier will second
21 that.

22 ACTING CHAIR SHERWOOD: We have had a motion.
23 We have a second.

24 Would you take roll on that?

25 MS. HIGASHI: Mr. Harrigan?

1 MEMBER HARRIGAN: Aye.

2 MS. HIGASHI: Mr. Lazar?

3 MEMBER LAZAR: Aye.

4 MS. HIGASHI: Mr. Smith?

5 MEMBER SMITH: Aye.

6 MS. HIGASHI: Ms. Steinmeier?

7 MEMBER STEINMEIER: Aye.

8 MS. HIGASHI: Ms. Williams?

9 MEMBER WILLIAMS: Aye.

10 MS. HIGASHI: Mr. Sherwood?

11 ACTING CHAIR SHERWOOD: Aye.

12 The motion passes. I'd like to thank everyone
13 for coming up today on this issue.

14 MS. HIGASHI: This brings us to Item 4, another
15 set of Proposed Parameters and Guidelines. This is on
16 the "Sex Offenders: Disclosure by Law Enforcement
17 Officers," better known as "Megan's Law." And this item
18 will be presented by Cathy Cruz.

19 MS. CRUZ: Good morning.

20 ACTING CHAIR SHERWOOD: Good morning, Cathy.

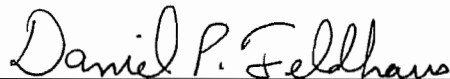
21 MS. CRUZ: On August 23, 2001, the Commission
22 adopted its Statement of Decision partially approving the
23 "Sex Offenders: Disclosure by Law Enforcement Officers"
24 test claim. The Commission determined that the test
25 claim legislation, which concerns the registration of

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 9th day of April 2002.



DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
March 28, 2002

Present: Acting Chairperson William Sherwood
 Representative of the State Treasurer
 Member Cal Smith
 Representative of the Director of the Department of Finance
 Member Sherry Williams
 Representative of the Director of the Office of Planning and Research
 Member John Harrigan
 Representative of the State Controller
 Member Joann Steinmeier
 School Board Member
 Member John Lazar
 City Council Member
Vacant: Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Sherwood called the meeting to order at 9:35 a.m.

APPROVAL OF MINUTES

Item 1 February 28, 2002

Upon motion by Member Steinmeier and second by Member Williams, the minutes were adopted. Member Smith abstained.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

PROPOSED STATEMENT OF DECISION – TEST CLAIM

Item 2 *Community College District Budget and Financial Reports, Fiscal
Management Reports, and Financial and Compliance Audits*
97-TC-10, 11, 12, Santa Monica Community College District, Claimant
Education Code Sections 84030, 84040 and 84040.5
Statutes of 1977, Chapters 36 and 936; Statutes of 1978, Chapter 207;
Statutes of 1979, Chapter 221; Statutes of 1980, Chapter 884; Statutes
of 1981, Chapters 470, 471, 930 and 1178; Statutes of 1983, Chapter 1206;
Statutes of 1984, Chapters 609 and 1282; Statutes of 1986, Chapter 1486;

Statutes of 1987, Chapter 1025; Statutes of 1990, Chapter 1372; Statutes of 1994, Chapter 20; California Code of Regulations, Title 5, Sections 58300-58301, 58303-58308, 58310-58312, 58314, 58316, 58318, 59100, 59102, 59104, 59106, 59108, 59110, 59112, and 59114

Member Harrigan moved for adoption of the consent calendar. With a second by Member Lazar, the consent calendar, consisting of item 2, was unanimously adopted.

Paula Higashi, Executive Director, noted that the Department of Finance suggested one change for the remainder of the test claim, which is set for the May Commission hearing.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 3 *Brown Act Reform*, CSM 4469
City of Newport Beach, Claimant
Statutes of 1993, Chapter 1136; Statutes of 1993, Chapter 1137; Statutes of 1993, Chapter 1138; Statutes of 1994, Chapter 32 and Consolidation with *Open Meetings Act*, CSM 4257, Statutes of 1986, Chapter 641

Shirley Opie, Assistant Executive Director, presented this item. She noted that eligible claimants that incurred increased costs for preparing and posting an agenda, including closed session items, for the new types of legislative bodies added by Brown Act Reform, can claim reimbursement beginning January 1, 1994. She added that eligible claimants that incurred increased costs to comply with the closed session requirements of Brown Act Reform can claim reimbursement beginning January 1, 1994. Specifically, the closed session requirements include disclosing in an open meeting, prior to holding any closed session, each item to be discussed in closed session; reconvening in open session prior to adjournment and reporting the actions and votes taken in closed session; and providing copies of closed session documents.

Ms. Opie explained that eligible claimants will have three options for claiming reimbursement for the cost of preparing and posting an agenda, including closed session items: 1) actual time, 2) standard time, or 3) a flat rate per meeting. She noted that the basis for the standard time and flat rate was established in the amendment to the Open Meetings Act Parameters and Guidelines adopted by the Commission on November 30, 2000. She indicated that only one reimbursement option may be selected for each type of meeting during a fiscal year, for claiming costs incurred for agenda preparation and posting, including closed session items. She stated that regardless of the reimbursement option selected, eligible claimants must claim actual costs incurred for subsequent reporting of actions taken in closed session, providing copies of documents approved or adopted in closed session, and training.

Further, Ms. Opie noted that all claimants will claim costs for all reimbursable activities for Open Meetings Act and Brown Act Reform under these parameters and guidelines beginning with the annual reimbursement claims filed for 2001-2002 fiscal year costs. However, she explained that until that time, reimbursement for Open Meetings Act must be claimed under that program as prescribed in the State Controller's claiming instructions.

Ms. Opie stated that based on the evidence in the record, ongoing training was included as a reimbursable activity because it constitutes a reasonable method of complying with the mandated activities. However, she noted that it was limited to training the members of only those legislative bodies that actually hold closed sessions, and limited to the activities related to closed session requirements.

Ms. Opie also clarified the proposed changes listed on the errata sheet for this item. She recommended that the Commission adopt the claimant's proposed parameters and guidelines, as modified by staff. She also recommended that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Parties were represented as follows: Pam Stone and Glen Everroad, representing the City of Newport Beach; Allan Burdick, for the California State Association of Counties; Matt Paulin and Susan Geanacou, for the Department of Finance; and Ginny Brummels and Shawn Silva, for the State Controller's Office.

Ms. Stone concurred with staff's analysis, with one exception. She disagreed with training being limited to just closed-session items. She argued that beginning January 1, 1994, the amendments to the Brown Act brought a substantial number of advisory boards and commissions into the requirements of the Open Meetings Act that were not previously subject to it. Because boards and commissions cannot discuss something at an open meeting that is not on the agenda, she requested that training be expanded to those advisory boards and commissions not previously subject to the Brown Act. Regarding the cost of this training, she explained that most advisory board and commission members are volunteers. Therefore, the only cost would be for the time of the trainer.

Mr. Everroad agreed with Ms. Stone. He added that training is significant in complying with the requirements of the Brown Act and Open Meetings Act.

Mr. Paulin noted that the Department of Finance opposed the inclusion of training because it was not included in the Commission's Statement of Decision.

Mr. Silva agreed with the staff analysis. He also agreed with Mr. Paulin regarding training, adding that it goes beyond what is provided in the Statement of Decision.

Camille Shelton, Senior Commission Counsel, explained that the claimant was requesting training for the entire membership of the body on the entire Brown Act. She indicated that the entire Brown Act has never been the subject of the test claim and that the test claim is limited to five code sections. Therefore, she stated that providing training on the entire Brown Act would be going beyond the scope of the Commission's Statement of Decision. She noted that many of the provisions were originally enacted in 1953, so they may not even qualify for reimbursement under article XIII B, section 6. She also noted that training was not recommended for the activities of preparing and posting an agenda because members of staff, not board members, generally perform these activities.

Further, Ms. Shelton clarified that even though an activity is not in the statement of decision, the Commission has the authority to include activities in the parameters and guidelines that are reasonably related to a mandate.

Member Lazar requested that Ms. Stone respond to Ms. Shelton's comments. Ms. Stone agreed that the claimant's original proposal was for training on the entire Brown Act. However, at this point, she clarified that the claimant is requesting training for those boards and commissions brought under the Brown Act in 1994 since they were previously not subject to it and now have to prepare and post agendas. Although she is aware that staff generally prepares the agenda, she explained that it was not uncommon for board members to raise issues that they would like to address. Therefore, she maintained that board and commission members need to be aware that if they have an issue to be discussed, not only does it need to be on the agenda, but also the terminology needs to be appropriate so that the action desired by the board or commission can be taken.

Member Harrigan asked Ms. Shelton to respond. Ms. Shelton indicated that the claimant was still requesting reimbursement for training the new members on the Brown Act, for which there is no Commission decision. She noted that the old parameters and guidelines for the *Open Meetings Act* test claim did not include a reimbursable component for training. She added that if the Commission was to approve training for board members to prepare and post agendas, this could be seen as inconsistent because the new legislative bodies would be reimbursed for training but the old bodies would not.

Member Smith requested clarification regarding issues not addressed in the statement of decision. Ms. Shelton provided that clarification. Member Smith also requested clarification regarding issues not initially part of the test claim. Ms. Shelton clarified that at the test claim phase, there has to be a ruling on the activities that are expressly required by the test claim statutes. All the Commission can do at the parameters and guidelines phase is include activities that are reasonably related to those activities expressly required by the statute.

Member Lazar asked the claimant to respond. Ms. Stone noted that violating the Brown Act could result in a substantial amount of liability. She stated that the claimant would be satisfied with pro-rated training to the new boards and commissions on the reimbursable activities and consequences for violation.

Member Steinmeier supported Ms. Stone's position. She added that perhaps through the training process of the board members, staff members could be present so that they could all hear the same thing at the same time. She noted that in Los Angeles County, people have been publicly ridiculed for violating the Brown Act.

Member Steinmeier made a motion that was seconded by Member Lazar, to add training for members on the proper agendizing of an item and how those actions have to be displayed on an agenda in order to be able to take action at a particular meeting. Ms. Shelton requested clarification on the motion. Member Steinmeier clarified that she was talking about ongoing training for the members of the new legislative bodies.

Member Harrigan requested the State Controller's Office to comment on the training issue. Ms. Brummels stated that the legislative bodies would need to be clearly defined within the parameters and guidelines, as well as which bodies would be eligible for which time period.

Ms. Geanacou requested that if training is included, it be limited to a one-time basis. Member Harrigan asked for clarification on what was meant by "one-time." Ms. Geanacou clarified

that each person expected to be aware of the requirements would receive training on a time-appropriate basis, depending on when they came on board.

Member Steinmeier commented that as a practical matter, it would cost the same to train all members on an ongoing basis, as it would be to train new members as they come on board. Essentially, every time there is a new member, everybody gets the training again, but not every year for every person.

Ms. Stone added that since most of the members are volunteers, the only cost is for the trainer. In response to Ms. Brummels' comments, Ms. Stone noted that every jurisdiction has different boards and commissions.

Chairperson Sherwood requested staff to comment on Member Steinmeier's motion. Ms. Shelton stated that the motion is within the Commission's purview because they would be finding that training members on preparing and posting an agenda would be reasonably related to the two activities. Ms. Shelton noted that the legislative bodies that were subject to the Brown Act before, under the Open Meetings Act, would not be reimbursed for training.

Regarding Ms. Brummels' comments about clearly identifying the legislative bodies, Ms. Shelton clarified that they are already identified in the parameters and guidelines, as well as is the reimbursement period, which begins January 1, 1994.

Regarding the issue of training, Mr. Burdick commented that in '93-94, a wide range of changes were made to the Ralph M. Brown Act. As a result of the comprehensive nature, training has to be done on the whole act, because the whole law process has to be explained, as well as what was changed and how they relate to each other.

Ms. Shelton reminded the Commission that the whole act has never been brought before the Commission and there is no Commission decision on the whole Brown Act.

Ms. Stone offered a compromise on the training issue. She proposed a flat 50 percent reimbursement of the cost of training for new boards and commissions brought under the Brown Act in 1994, instead of the pro-rata portion.

In response to a request from Chairperson Sherwood, Ms. Shelton noted that the Commission has the authority to accept Ms. Stone's proposal by finding that the 50 percent would be reasonably related to the Commission's Statement of Decision on reimbursable activities.

Chairperson Sherwood commented that there was not enough information to support 50 percent.

Mr. Silva expressed concern that nothing was written on paper. He suggested continuing this item to the next hearing to allow the claimant to submit its proposal in writing, and allow the state agencies to review the proposal and comment. This would also allow the Commission members time to prepare for and know what is being voted on.

Member Steinmeier withdrew her motion to allow the item to be continued and for the claimant to submit specific language. Member Lazar withdrew his second.

Member Harrigan moved to defer this item until the next agenda. With a second by Member Steinmeier, the motion carried unanimously.

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 4 *Sex Offenders: Disclosure by Law Enforcement Officers*, 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909; Statutes of 1997, Chapters 17, 80,
817, 818, 819, 820, 821 and 822; Statutes of 1998, Chapters 485, 550,
927, 928, 929 and 930

Cathy Cruz, Program Analyst with the Commission, presented this item. She noted that on August 23, 2001, the Commission adopted its Statement of Decision partially approving the *Sex Offenders: Disclosure by Law Enforcement Officers* test claim. The Commission determined that the test claim legislation, which concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies, imposed a reimbursable new program upon local agencies and community college district law enforcement agencies by requiring specific new activities. She recommended that the Commission adopt the claimant's proposed parameters and guidelines, as modified by staff.

Parties were represented as follows: Pam Stone, representing the County of Tuolumne; Gary Bettenhausen, for the Sacramento Sheriff's Department; Allan Burdick, for the California State Association of Counties; Susan Geanacou and John Al-Amin, for the Department of Finance; and Ginny Brummels and Shawn Silva, for the State Controller's Office.

Ms. Stone noted that Lieutenant Steely from the County of Tuolumne was not able to attend. On behalf of the County of Tuolumne, Ms. Stone concurred with the parameters and guidelines, as modified by staff, and requested that the Commission adopt them.

Mr. Burdick supported staff's recommendation.

Mr. Al-Amin and Mr. Silva also concurred with the staff analysis and recommendation. However, Mr. Silva clarified that the primary purpose of the Source Documents section under Supporting Data is to note that all incurred costs should be traceable to source documents. He added that the subsequent listing in the second sentence is of documents in general, and not of source documents. He further clarified that a source document is a document that is created contemporaneously with the event in question, and documents may include subsequently created summaries. He noted that he made this clarification so that claimants do not dispose of source documents when they really need to be retained and submitted with claims. He indicated that the State Controller's Office will propose specific language in the future.

Member Steinmeier made a motion that was seconded by Member Williams, to approve staff's recommendation. Member Smith recused himself from this item because he has been involved on the other side of this issue in his department. The motion carried 5-0.

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

- Item 5 *Handicapped & Disabled Students*, 00-PGA-03 & 00-PGA-04
County of Los Angeles and County of Stanislaus, Claimants
Statutes of 1984, Chapter 1747; Statutes of 1985, Chapter 1274;
Sections 60000-60020, Title 2, California Code of Regulations, Division 9

Item 5 was postponed at the request of the claimant. Ms. Higashi noted that this item may get postponed as far as the June agenda.

EXECUTIVE DIRECTOR'S REPORT

- Item 6 Workload, Legislation, Next Agenda

Ms. Higashi noted the following:

- *Workload.* In the last couple of months, litigation workload has increased. Staff is working on putting together a master calendar of the cases that are anticipated to be scheduled and heard through next June. Staff is also in the process of interviewing potential law clerks.
- *Legislation.* Staff met with the Legislative Analyst's Office staff, the Department of Finance staff, and the State Controller's Office staff on the issue of how deficiencies are reported to the Department of Finance, what happens with the deficiency letter, and how an amount is finally appropriated. Throughout the last month, staff also met with the Bureau of State Audits staff as they finalized the audit report, which has been issued. In addition, staff held its second annual mandates training for legislative staff.
- *Rulemaking Workshop.* The scheduled workshop will be rescheduled because a number of groups that would like to participate will not be able to attend.
- *Budget.* The budget will be heard on April 23rd in the Assembly, and on May 1st in the Senate. The Legislative Analyst's Office has recently requested copies of all of the parameters and guidelines, statements of decision, and statewide cost estimates for all of the mandates that are being proposed for this year's claims bill. The claims bill is with the Assembly Budget Committee and has not yet been officially introduced.
- *Future Hearing Agendas.* The proposed rulemaking order scheduled for the April agenda will be moved since the workshop will be rescheduled. The Pupil Promotion and Retention test claim and Investment Reports incorrect reduction claim are set for April. A couple of test claims may be set for the May agenda. Items may be moved to the June agenda because of the litigation schedule.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number BS055882 in the Superior Court of the State of California, County of Los Angeles.
CSM Case No. 01-L-01 [*San Bernardino MIA*]
2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.
CSM Case No. 01-L-13 [*Pupil Expulsions*]
3. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
CSM Case No. 01-L-04 [*Physical Performance Tests*]
4. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Appellate Court of California, Third Appellate District.
CSM Case No. 01-L-11 [*School Site Councils*]
5. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of California, Fourth Appellate District.
CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
6. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
CSM Case No. 01-L-07 [*Domestic Violence*]
7. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Superior Court of the State of California, County of Los Angeles.
CSM Case No. 01-L-08 [*SEMS*]
8. *County of San Bernardino v. Commission on State Mandates of the State of California et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles.
Case No. 01-L-10 [*Property Tax Administration*]
9. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, County of San Diego, Fourth Appellate District.
Case No. 01-L-16 [*San Diego MIA*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Hearing no further comments, Chairperson Sherwood adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Sherwood reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business and upon motion by Member Harrigan and second by Member Steinmeier, Chairperson Sherwood adjourned the meeting at 11:08 a.m.



PAULA HIGASHI

Executive Director

COMMISSION ON STATE MANDATES

NOTICE AND AGENDA ¹

State Capitol, Room 126
Sacramento, California

April 25, 2002

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 March 28, 2002

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 2-3

A. TEST CLAIM

Item 2 *Pupil Promotion and Retention*, 98-TC-19
San Diego Unified School District, Claimant
Education Code Sections 37252, 37252.5, 48070 and 48070.5
Statutes of 1998, Chapters 742 and 743, et al.

B. INCORRECT REDUCTION CLAIM

Item 3 *Investment Reports*, 00-9635802-I-01
County of Los Angeles, Claimant
Government Code Section 53646, subdivisions (a), (b) and (e)
Statutes of 1995, Chapter 783; Statutes of 1996, Chapters 156 & 749

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 4 *Brown Act Reform*, CSM 4469 (Continued from March hearing)
City of Newport Beach, Claimant
Statutes of 1993, Chapter 1136; Statutes of 1993, Chapter 1137; Statutes of 1993, Chapter 1138; Statutes of 1994, Chapter 32 and Consolidation with *Open Meetings Act*, CSM 4257, Statutes of 1986, Chapter 641

¹ This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

VI. STAFF REPORTS (info)

Item 5 Implementation of *School Bus Safety II* Audit Recommendations

Item 6 Executive Director's Report on Workload, Budget, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS

11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-13 [*Pupil Expulsions*]
2. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 01-L-04 [*Physical Performance Tests*]
3. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Appellate Court of the State of California, Third Appellate District. CSM Case No. 01-L-11 [*School Site Councils*]
4. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of the State of California, Fourth Appellate District. CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
5. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, County of Los Angeles. CSM Case No. 01-L-17 [*Domestic Violence*]
6. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 01-L-08 [*SEMS*]
7. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles. Case No. 01-L-10 [*Property Tax Administration*]
8. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, County of San Diego, Fourth Appellate District. Case No. 01-L-16 [*San Diego MIA*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

For information, contact:

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
(916) 445-0278 Fax

WORKSHOP

DEVELOPMENT OF REGULATIONS TO IMPLEMENT AB 1679

(Statutes of 1999, Chapter 643)

APRIL 25, 2002

1:30 to 3:00 P.M.

COMMISSION ON STATE MANDATES

CONFERENCE ROOM

980 NINTH STREET, SUITE 300

SACRAMENTO

Materials. Materials are posted on the Commission website at <http://www.csm.ca.gov>. For information, contact Shirley Opie, Assistant Executive Director, at (916) 323-3562.

Special Accommodations. If you need special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodation, please contact the Commission Office at least five *working* days before the workshop.

ITEM 4

PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137, and 1138

Open Meetings Act/Brown Act Reform

Table of Contents

Supplemental Staff Analysis and Proposed Parameters and Guidelines	1
Exhibit A	
Adopted Statement of Decision	39
Exhibit B	
Claimant's Proposed Parameters and Guidelines	71
Exhibit C	
Department of Finance (DOF) Comments	83
Exhibit D	
Claimant's Response to DOF Comments	87
Exhibit E	
Mr. Paul C. Minney, on behalf of Mandated Cost Systems, Inc. (MCS), interested party, Response to DOF Comments	93
Exhibit F	
State Controller's Office Comments	103
Exhibit G	
Five Declarations in Support of Claimant's Request to Include Training as a Reimbursable Activity	113
Exhibit H	
Staff Analysis Submitted at March 28, 2002 Hearing	127
Exhibit I	
Transcript from March 28, 2002 Hearing	155
Exhibit J	
Claimant's New Proposal for Training	187

ITEM 4

SUPPLEMENTAL STAFF ANALYSIS PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137, and 1138

Open Meetings Act/Brown Act Reform

The *Brown Act Reform* test claim legislation requires that “legislative bodies” of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act. The Commission on State Mandates (Commission) previously adopted two test claims on the Brown Act: the *Open Meetings Act* test claim (CSM-4257), and *School Site Councils and Brown Act Reform* test claim (CSM-4501).

In its Statement of Decision on the *Brown Act Reform* test claim (CSM-4469), adopted on June 28, 2001, the Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim legislation expanded the types of “legislative bodies” required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, and also required all “legislative bodies” to perform a number of additional activities in relation to the closed session requirements of the Brown Act.

Background

These parameters and guidelines were heard at the Commission’s March 28, 2002 hearing.¹ The claimant agreed with the staff analysis of the parameters and guidelines except for the provisions related to training. The Department of Finance continued to oppose training because training was not included in the statement of decision. The State Controller’s Office supported the staff analysis. However, they agreed with Department of Finance that training went beyond the statement of decision. A considerable amount of discussion regarding the training component occurred including suggestions for modifying the language that was proposed in the parameters and guidelines. As a result, the item was continued to allow the claimant time to submit another written proposal for training.²

¹ See Exhibit H for the staff analysis and the proposed parameters and guidelines, including a errata sheet that was handed out at the hearing.

² See Exhibit I for the relevant portion of the hearing transcript.

Staff Analysis

The claimant submitted a written proposal for training on April 10, 2002.³ Staff reviewed the claimant's last proposal and submits it (Option 1) and three other options for the Commission to consider:

Option 1 – Claimant's New Proposal

The claimant's last proposal provides reimbursement for training as follows:

Train members of only those legislative bodies that actually hold closed executive sessions on the closed session requirements of *Brown Act Reform*. Train members of those legislative bodies which consist of local bodies created by state or federal statute; standing committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action; and permanent and temporary advisory bodies (except bodies of less than a quorum of the members of the legislative body) on the requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. In the event that the legislative members are not paid, only the time of the trainer is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

The declaration that was submitted to support this proposal states, with respect to the language staff proposed at the March hearing, that,

While the proposed training component addresses those legislative bodies which have closed session such that these bodies will follow the new closed session requirements, there is not training component for those new bodies which became subject to the Brown Act. As clearly demonstrated from the declarations filed herein, the membership and composition of those newly added legislative bodies generally is not aware of the rigorous requirements of the Brown Act nor the onerous penalties for failure to so comply. Additionally, the individuals generally appointed to the various legislative bodies do not have an extensive background in the Brown Act. Furthermore, many of the members of these legislative bodies are volunteers, who are not recompensed for the time they devote to their civic duties. As a result, it is incumbent that these individuals be trained in the ramifications of the Brown Act.

This option includes training on the preparation and posting of agenda items. As noted by staff at the March hearing, these are activities generally performed by staff members. The *Open Meetings Act* parameters and guidelines, which reimburse some legislative bodies for the preparation and posting of agenda items, do not include a reimbursable component for training. Thus, if this option is adopted, only the new types of bodies that are required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3 under *Brown Act Reform* would be eligible to claim reimbursement for this portion of the training.

³ Exhibit J

The bodies previously covered by *Open Meeting Act* parameters and guidelines would not be eligible.

Section V.B.6 of the proposed parameters and guidelines provides that, if the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion of the training related to this mandate can be claimed. However, given that there is no mention in this section that only the pro-rata portion is reimbursable and that the claimant advocated training on the entire *Brown Act*, it is not clear if the claimant's intent here is to limit reimbursement of training that is specifically related to *Brown Act Reform*.

Option 2 – Staff Recommendation

The staff recommendation submitted to the Commission for the March hearing, provided the following:

Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

This option provides ongoing training on the new Brown Act Reform closed session activities for all legislative bodies that are subject to the closed session requirements, including the new types of bodies that are required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3. It does not include training on preparing and posting closed session agenda items because these activities are generally performed by staff and there was no request for staff training. It is limited to training members of only those legislative bodies that actually hold closed sessions. Further, if the training encompasses more subjects than the activities related to closed session requirements, only the pro rata portion of the training is reimbursable.

Option 3 – Claimant's Original Proposal

Following is the original language that was proposed by the claimant:

Training to the members of the legislative body on the new requirements of Brown Act Reform, as well as training to all new members of the legislative body on the requirements of the Brown Act prior to or upon attaining office. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, all time of the trainer and legislative members is reimbursable. Additionally, all time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

All time of the trainer and legislative members would be reimbursable, as well as all time for preparation of materials, for training on the *Brown Act* requirements, including the new requirements of *Brown Act Reform*.

The entire *Brown Act* has never been the subject of a test claim. The *Brown Act Reform* test claim and the *Open Meeting Act* test claim were limited to just five code sections. The statements of decision on these test claims are limited to those five code sections. Thus, staff finds that providing training on the entire *Brown Act* goes beyond the scope of the Commission's statements of decision.

Option 4 – Department of Finance's Proposal

The Department of Finance opposes the inclusion of training because it was not included in the statement of decision. However, at the March hearing, DOF staff recommended that if training is included, that it be reimbursed on a one-time basis for new members. Following is proposed language:

On a one-time basis, train each new member of those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

The staff recommendation submitted to the Commission for the March hearing, included ongoing training on the closed session requirements based on the evidence in the record. The claimant submitted declarations that because most board and commission members are laypersons and not attorneys ongoing training is needed.⁴ Accordingly, staff found that ongoing training constitutes a reasonable method of complying with the mandate.

Staff Recommendation

Based on the evidence in the record, staff finds that ongoing training is a reimbursable activity within the context of this mandate because it constitutes a reasonable method of complying with the mandated activities. In Option 2, training is limited to the activities expressly required by the test claim statutes.

Therefore, staff recommends that the Commission adopt the Staff Recommendation, which includes Option 2 in the proposed parameters and guidelines beginning on page 5.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

⁴ Exhibit G

STAFF'S PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137 and 1138

Open Meetings Act/Brown Act Reform

I. SUMMARY OF THE MANDATE

Government Code sections 54952, 54954.2, 54957.1 and 54957.7, require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act.

On June 28, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision on the *Brown Act Reform* test claim (CSM-4469). The Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitute a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim legislation expanded the types of "legislative bodies" required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, to include:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

It also required all "legislative bodies" to perform a number of additional activities in relation to the closed session requirements of the Brown Act, as follows:

- To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Gov. Code, § 54954.2, subd. (a).)
- To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
- To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). (Gov. Code, § 54957.7, subd. (b).)
- To provide copies of closed session documents as required. (Gov. Code, § 54957.1, subd. (b) and (c).)

The Commission previously adopted two test claims on the Brown Act:

1. Open Meetings Act

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim (CSM-4257). Statutes of 1986, chapter 641, added Government Code section 54954.2 to require that the legislative body of the local agency, or its designee, post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting in a location freely accessible to the public. The following types of "legislative bodies" were eligible for reimbursement:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.

Statutes of 1986, chapter 641 also added Government Code section 54954.3 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

2. School Site Councils and Brown Act Reform

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim (CSM-4501). This test claim was based on Government Code section 54954 and Education Code section 35147, which addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts.¹

II. ELIGIBLE CLAIMANTS

Any county, city, a city and county, school or special district that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, prior to its amendment by Statutes of 1998, chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for *Brown Act Reform* was filed on December 29, 1994. Statutes

¹ The parameters and guidelines for the *School Site Councils and Brown Act Reform* test claim are not included in these parameters and guidelines.

of 1993, chapters 1136, 1137, and 1138, became effective January 1, 1994. Therefore, costs incurred on or after January 1, 1994 for compliance with the *Brown Act Reform* mandate are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

Initial years' costs shall not include any costs that were claimable or reimbursed pursuant to *Open Meetings Act* Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000. Reimbursement for these costs must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively.

Annual claims, commencing with the 2001-2002 fiscal year, shall include all costs for *Open Meetings Act* and *Brown Act Reform*.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the following activities are eligible for reimbursement:

A. Agenda Preparation and Posting Activities

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting.² (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.

² As amended by Statutes of 1993, chapter 1136.

- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
 - a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
 - b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
 - c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
 - d. Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies of the

name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (Gov. Code, § 54957.1, subd. (a)(4).)

- e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. (Gov. Code, § 54957.1, subd. (a)(6).)
3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)
4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See section V.B.6.

Beginning January 1, 1994, the following "legislative bodies" are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

V. CLAIM PREPARATION AND SUBMISSION

Each reimbursement claim must be timely filed. Each of the following cost elements must be identified for each reimbursable activity identified in section IV of this document.

A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items

Eligible claimants may use the actual time, standard time, or flat rate reimbursement options for claiming costs incurred pursuant to section IV.A of these parameters and guidelines for agenda preparation and posting, including closed session items.³ Eligible claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training.

For each type or name of meeting claimed during a fiscal year, select one of the following reimbursement options. For example, all city council meetings in a given fiscal year may be claimed on only one basis: actual time, standard time or flat-rate. If standard time is selected, all city council meetings must be claimed using this basis for the entire year. However, all city council meetings could be claimed on an actual cost basis during a subsequent fiscal year.

1. Actual Time

List the meeting names and dates. Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

Counties and cities may claim indirect costs pursuant to section V.C.

2. Standard Time

a. Main Legislative Body Meetings of Counties and Cities

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 30 minutes and then by the blended productive hourly rate of the involved employees.

Counties and cities may claim indirect costs pursuant to section V.C.

b. Special District Meetings, and County and City Meetings Other Than Main Legislative Body

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", and "public comments", by 20 minutes and then by the blended productive hourly rate of the involved employees.

³ The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under Brown Act Reform. Refer to sections III and IV of these parameters and guidelines.

Special districts, counties and cities may claim indirect costs pursuant to section V.C.

c. School and Community College Districts and County Offices of Education

List the meeting names and dates. For each meeting, multiply the number of agenda items times the minutes per agenda item for County Offices of Education and for districts, by enrollment size, times the blended productive hourly rate of the involved employees. The minutes per agenda for County Offices of Education and for districts by enrollment size are:

County Offices of Education:	45 minutes
Districts:	
Enrollment 20,000 or more	45 minutes
Enrollment 10,000 – 19,999	15 minutes
Enrollment less than 10,000	10 minutes

School and community college districts and County Offices of Education may claim indirect costs pursuant to section V.C.

3. Flat Rate⁴

List the meeting names and dates. Multiply the uniform cost allowance, shown in the table provided below, by the number of meetings. The uniform cost allowance shall be adjusted each year subsequent to fiscal year 1997-1998 by the Implicit Price Deflator referenced in Government Code section 17523.

1993-1994	\$ 90.10
1994-1995	92.44
1995-1996	95.12
1996-1997	97.31
1997-1998	100.00

B. Direct Cost Reporting

Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

⁴ The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under Brown Act Reform. Refer to sections III and IV of these parameters and guidelines.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element B.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training members of the legislative body to perform the reimbursable activities, as specified in section IV.B of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in section VI.

C. Indirect Cost Rates

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department of program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Cities, Counties and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

School Districts

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

Community Colleges

Community colleges have the option of using (1) a federally approved rate, using the cost accounting principles from the OMB Circular A-21 "Cost Principles of Educational Institutions", (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7 % indirect cost rate.

VI. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed must be traceable to source documents that show evidence of their validity and relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

For those entities that elect reimbursement pursuant to the standard time methodology, option 2 in section V.A, documents showing the calculation of the blended productive hourly rate and copies of agendas shall be sufficient evidence. For those entities that elect reimbursement pursuant to the flat-rate methodology, option 3 in section V.A, copies of agendas shall be sufficient evidence.

The blended productive hourly rate, used in claiming standard or unit time reimbursements, may be calculated by determining the percentage of time spent by persons or classifications of persons on the reimbursable activities and multiplying the productive hourly rate (including salaries, benefits and indirect costs, if not claimed elsewhere) for each person or classification of persons times the percentage of time spent by that person or classification of persons. Claimants may determine a percentage allocation for the person or classification of persons in a base fiscal year and use that percentage allocation for subsequent future years by multiplying the base year percentages times the productive hourly rate for that person or classification of persons for the fiscal year of the reimbursement claim.

For example, a city manager may determine that the percentage of time spent on the reimbursable activities by various classifications in a base year of fiscal year 1998-1999 was as follows:

City Manager	17%
City Attorney	15%
City Clerk	36%
Department Managers	9%
Secretaries	23%
Total	100%

The city determines that the productive hourly rate (salaries, benefits, and indirect costs) for fiscal year 2000-2001 for each classification are as follows:

	Salary	Benefits	Indirect Cost Rate	Indirect Costs	Productive Hourly Rate
City Manager	\$60	\$12	29%	\$13	\$85
City Attorney	\$55	\$10	30%	\$15	\$80
City Clerk	\$40	\$ 8	31%	\$12	\$60
Department Manager	\$45	\$ 9	30%	\$11	\$65
Secretaries	\$18	\$ 5	25%	\$ 7	\$30

The blended productive hourly rate for fiscal year 2000-2001 is determined by multiplying the percentages in the base year times the productive hourly rate in the fiscal year claimed, and adding the totals, as follows:

City Manager	17%	\$85	\$14.25
City Attorney	15%	\$80	\$12.00
City Clerk	36%	\$60	\$21.60
Department Manager	9%	\$65	\$ 5.85
Secretaries	23%	\$30	\$ 6.90
Total	100%		\$60.80

The city's claim would be determined by multiplying the blended productive hourly rate times the minutes per agenda item times the number of agenda items.

B. Record Keeping

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain a mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any other source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

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COMMISSION ON STATE MANDATES

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SACRAMENTO, CA 95814

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June 29, 2001

Mr. Glen Everroad, Revenue Manager
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658

Mr. Glen Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

State Agencies and Interested Parties (See Attached Mailing List)

RE: Adopted Statement of Decision
Brown Act Reform, CSM 4469
City of Newport Beach, Claimant
Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
Statutes of 1993, Chapters 1136, 1137 & 1138
Statutes of 1994, Chapter 32

Dear Mr. Everroad and Mr. Haas:

The Commission on State Mandates adopted the attached Statement of Decision on June 28, 2001. This decision is effective on June 29, 2001.

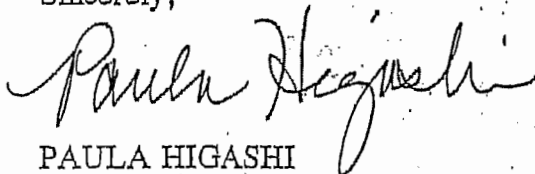
State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office. Following is a description of the responsibilities of all parties and the Commission during the parameters and guidelines phase.

- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code 17557 and Title 2, CCR sections 1183.1 et seq. (the regulations), the claimant is responsible for submitting proposed parameters and guidelines by July 30, 2001. See Government Code section 17557 and Title 2, CCR sections 1183.1 et seq. for guidance in preparing and filing a timely submission.
- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, the Commission will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. All recipients will be given an opportunity to provide written comments or recommendations to the Commission within 15 days of service. The claimant and other interested parties may submit written rebuttals. See CCR section 1183.11.

- **Adoption of Parameters and Guidelines.** After review of the proposed parameters and guidelines and all comments, Commission staff will recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's original submission. See CCR section 1183.12.

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,



PAULA HIGASHI

Executive Director

Enclosure: Adopted Statement of Decision

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DATE: 6/29/01 INITIAL: CD
THRON: _____ FILE: _____
WORKING BINDER: ✓

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes of 1993, Chapters 1136, 1137, 1138 and Statutes of 1994, Chapter 32;

Filed on December 29, 1994 and amended on August 7, 2000;

By the City of Newport Beach, Claimant.

No. CSM 4469

Brown Act Reform

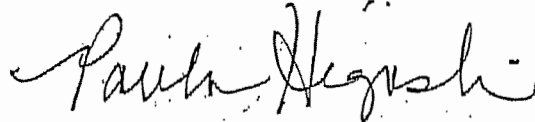
STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on June 28, 2001)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on June 29, 2001.



Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code sections 54952, 54954.2, 54957.1, and 54957.7 as amended by Statutes of 1993, Chapters 1136, 1137, 1138 and Statutes of 1994, Chapter 32;

Filed on December 29, 1994 and amended on August 7, 2000;

By the City of Newport Beach, Claimant.

No. CSM 4469

Brown Act Reform

STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on June 28, 2001)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on May 24, 2001 during a regularly scheduled hearing. Mr. Glen Everroad and Ms. Pamela Stone appeared on behalf of the City of Newport Beach. Mr. Allan Burdick appeared on behalf of the California State Association of Counties. Mr. Cedrik Zemitis and Mr. Jim Lombard appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 4 to 2, approved this test claim.

BACKGROUND AND FINDINGS

The test claim legislation, Government Code sections 54952, 54954.2, 54957.1 and 54957.7, requires the "legislative bodies" of local agencies¹ to comply with certain changes to the Ralph M. Brown Act (Gov. Code § 54950 et seq., hereafter referred to as the Brown Act or the Act).² Section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and, section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session.

¹ As used in the Ralph M. Brown Act, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency. (Gov. Code, § 54951.)

² All further statutory references are to the California Government Code unless otherwise indicated.

The California Legislature enacted the Brown Act in 1953 based on an Assembly Judiciary Committee Report regarding the "secret decisionmaking" of local governments. The Act declared the law's intent that deliberations as well as action of local agencies occur openly and publicly. It also represented the Legislature's determination of how the balance should be struck between public access to meetings of multi-member public bodies on the one hand and the need for confidential candor, debate, and information gathering on the other.³ The underlying theme of the Brown Act recognizes that:

The people [of this State], in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.⁴

Since the Brown Act was enacted, it has been amended regularly to expand the requirements of the Act and to clarify the "legislative bodies" to which the requirements of the Act apply. Numerous court cases and Attorney General Opinions have re-affirmed the Legislature's original intent to ensure that deliberations and decisionmaking of local agencies be conducted in an open forum with full participation from the public.

Prior Test Claims

The Commission on State Mandates has previously determined two test claims on the Brown Act.

Open Meetings Act (CSM-4257)

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim that added Government Code sections 54954.2 and 54954.3 to the Brown Act. Section 54954.2 required the "legislative bodies" of local agencies *for the first time* to prepare and post agendas for public meetings at least 72 hours prior to the scheduled meeting. In addition, the agenda was to contain a brief description of each item to be discussed. Local agencies were also prohibited from taking action on any item that was not on the agenda. Section 54954.3 required that each agenda provide the public with the opportunity to address the legislative body during the meeting.

Under CSM-4257, local agencies were eligible for reimbursement for the Brown Act requirements for the following types of legislative bodies: 1) the governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity; 2) any board, commission, committee, or body which exercises authority delegated to it by the legislative body; and, 3) planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body. The Commission's Parameters and Guidelines for CSM-4257 specifically provided reimbursement for the increased costs to prepare and post a single agenda 72 hours before a meeting of the legislative

³ California Attorney General's Office, *The Brown Act, Open Meetings for Local Legislative Bodies* (1994).

⁴ Government Code section 54950.

body of a local agency containing a brief general description of each item of business to be transacted or discussed.

School Site Councils and Brown Act Reform (CSM-4501)

The Brown Act came before the Commission again in test claim CSM-4501, *School Site Councils and Brown Act Reform*, filed by the Kern High School District, San Diego Unified School District, and the County of Santa Clara. This test claim was filed on Government Code section 54952 and Education Code section 35147 and addressed the application of the open meeting provisions of the Brown Act to specified schoolsite councils and advisory committees of school districts. On April 27, 2000, the Commission approved this test claim finding that Statutes of 1993, chapter 1138 among other things, added Government Code section 54952, subdivision (a), which provided, in relevant part, that the term "legislative body" for purposes of the open meeting requirements of the Brown Act also included any local body created by state or federal statute.

The Commission also found that Statutes of 1994, chapter 239 removed certain school site councils and advisory committees from the full requirements of the Brown Act, but added Education Code section 35147, which imposed an abbreviated set of open meeting requirements on school site councils and advisory committees established as part of the following programs: School Improvement Program; Native American Indian Early Childhood Education Act; Chacon-Moscone Bilingual-Bicultural Education Act; School-Based Coordination Program; Compensatory Education Program; Migrant Education Program; Motivation and Maintenance Program; and the federal Indian Education Program.

The Commission's Parameters and Guidelines for CSM-4501 provided reimbursement for notice and agenda activities for school district's schoolsite councils and certain advisory committees.

Claimant's Contentions

In their test claim, claimant contends that the test claim legislation imposes an increased level of service on local agencies. The claimant asserts the following:

- Government Code section 54952, subdivisions (a), (b) and (c), as amended, impose a higher level of service on local agencies by expanding the definition of "legislative body" which is subject to the notice requirements of the Brown Act. The agenda preparation and posting requirements of section 54954.2 now apply to an increased number of entities such as standing committees, advisory bodies and other local bodies created by state or federal statute;
- Government Code section 54954.2, subdivision (a), as amended, imposes a higher level of service on local agencies by expanding the notice requirements to include a description of each item to be discussed or transacted in closed session;

- Government Code sections 54957.1, subdivisions (a), (b) and (c) and 54957.7, subdivisions (a), (b) and (c), as amended, impose a higher level of service on local agencies by expanding the nature and extent of the required public reporting of action taken in closed sessions; and,
- These amendments require an increased level of service by local agencies, necessitating training for local agencies.

Department of Finance Contentions

The Department of Finance (DOF) submitted comments on this test claim on June 1, 1995. Their contention is that while chapters 1136 and 1137 (agenda and notice requirements and closed session requirements) may have resulted in reimbursable state-mandated costs pertaining to certain notification requirements, they may also have resulted in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. In addition, the DOF contends that the intent of chapter 1138 (definition of legislative body) was to provide cost savings to local governments by simplifying and clarifying the Brown Act requirements. Finally, regarding chapter 32, the DOF states that this is essentially clean-up legislation for the other three named chapters and does not affect the scope of the changes made by those chapters. Consequently, it is the DOF's belief that there are no reimbursable state-mandated costs in that legislation.⁵

At the hearing, the DOF argued that local agencies requested the enactment of the test claim legislation, and therefore, there are no costs mandated by the state.

Interested Party Contentions

The County Counsel of Marin County submitted comments in support of the test claim on May 30, 1995. Their contention is that the 1993 and 1994 amendments to the Brown Act require local agencies to perform an increased level of service resulting in increased state mandated costs for reporting requirements, record keeping, and other County staff responsibilities. In addition, the County claims that these provisions have resulted in an increased level of service to advisory bodies, which are now subject to the Brown Act amendments.

Interested Persons Contentions

Former Senator Quentin Kopp, author of the majority of the Brown Act legislation, submitted comments in opposition to the test claim. His contention is that the amendments to the Brown Act were proposed to reduce the costs to local agencies for posting agendas, making oral statements regarding closed session items, and providing a description of the items on the agenda.

⁵ Regarding chapter 32, the test claim submitted by claimant stated: "The provisions of Chapter 32, Statutes of 1994, did not effect the scope of the state mandated activities and costs described in this test claim."

The California Newspaper Publishers Association submitted comments in opposition to the test claim. Their contention is that the changes to the Brown Act do not create a state mandated local program because the amendments were intended by the legislature to be instructive, not to expand the open meeting requirements. In particular, the clarifying language "A brief general description of an item generally need not exceed 20 words" was added to radically reduce the costs of creating and posting agendas. The First Amendment Coalition submitted comments in opposition to the test claim adopting the arguments and conclusion of the California Newspaper Publishers Association.

Paul C. Minney of Spector, Middleton, Young & Minney, LLP submitted comments on the Draft Staff Analysis. His contention is that both permanent and temporary decisionmaking committees or boards created by formal action are "new legislative bodies" under the test claim statute because these bodies can exercise authority broader than that granted to the legislative body.

COMMISSION FINDINGS

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must direct or obligate an activity or task upon local governmental entities. If the statutory language does not mandate or require local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

Further, the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word "program," subject to article XIII B, section 6 of the California Constitution, as an activity that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the "program" is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose "costs mandated by the state."⁶

The test claim legislation requires the performance of certain activities related to public meetings by specified "legislative bodies" of local agencies. These local governmental bodies are carrying out a basic governmental function of making decisions regarding the operations of local agencies that provide services to the public. The mandatory compliance with the Brown Act is unique to local agencies; it is a peculiarly governmental function that does not apply to all residents and entities in the state. Therefore, the Commission finds that compliance by

⁶ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

local agencies with the open meeting requirements of the test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

The Commission continued its inquiry to determine if the test claim legislation constitutes a new program or higher level of service and imposes "costs mandated by the state" upon local agencies. Claimant contends that the test claim legislation imposes a higher level of service upon local agencies because the agenda preparation and posting requirements apply to an increased number of entities now defined as "legislative bodies" such as standing committees, advisory bodies and other local bodies created by state or federal statute. Claimant also contends that the test claim legislation requires new activities regarding the inclusion of closed session items on agendas and the reporting of closed session items both prior to and after the closed session. The analysis of these issues for the statutes at issue is discussed below.

Issue 1: Does the test claim legislation impose a new program or higher level of service upon local governmental bodies within the meaning of article XIII B, section 6 of the California Constitution?

Issue 1 is presented in two parts: Part One discusses the entities subject to the open session notice and agenda requirements and Part Two discusses the closed session requirements for all legislative bodies.

Part One: Entities Subject to Open Session Notice and Agenda Requirements

The notice and agenda provisions of the Brown Act are found in Government Code section 54954.2. Under the test claim legislation, this section requires the "legislative bodies" of local agencies to post a notice and agenda containing a brief general description of each item to be discussed at the meeting. Section 54954.2 states in relevant part the following:

At least 72 hours before a regular meeting, the legislative body of a local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.

New Entities Subject to the Notice & Agenda Requirements

Government Code section 54952 describes the "legislative bodies" required to comply with the Brown Act. The test claim legislation substantially amended section 54952 to clarify and describe the "legislative bodies" in greater detail. Section 54952 now defines "legislative body" in relevant part as follows:

- (a) The governing body of a local agency or any other local body created by state or federal statute.
- (b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However,

advisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

Thus, the "legislative bodies" required to comply with the Brown Act now include the following:

- The governing body of a local agency;
- A local body created by state or federal statute;
- A permanent decisionmaking body created by formal action;
- A temporary decisionmaking body created by formal action;
- A permanent advisory body created by formal action (except an advisory body with less than a quorum of the members);
- A temporary advisory body created by formal action (except an advisory body with less than a quorum of the members); and,
- Standing committees, irrespective of their composition with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action.

Under prior law, the "legislative body" of a local agency required to comply with the Brown Act was defined in several statutory provisions. Section 54952 defined the governing body of a local agency or any board or commission thereof, and any body on which officers of a local agency serve in their official capacity as members; section 54952.2 defined any multimember body with delegated authority of the legislative body; section 54952.3 defined any advisory body created by formal action and included both reduced notice requirements and an exemption from all Brown Act requirements for a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body; and, section 54952.5 defined planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency as "legislative bodies."

While amending section 54952, the test claim legislation also repealed sections 54952.2, 54952.3 and 54952.5. Based on the following analysis, the Commission finds that the test claim legislation created the following two new "legislative bodies" required to comply with the provisions of the Brown Act including the notice and agenda requirements of section 54954.2:

- Any local body created by state or federal statute

This body was not identified as a "legislative body" in prior law. Thus, the Commission finds that under the test claim legislation, it is a new body required to comply with the open session notice and agenda requirements imposed by Government Code section 54954.2; and,

- Standing committees with less than a quorum of the governing body which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action

The test claim legislation defines legislative body to include "standing committees of a legislative body, *irrespective of their composition*, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action." Historically, standing committees were permanent committees that met regularly and considered subjects of a particular class.⁷ Their composition, however, varied depending on the body that created them.

Prior to the enactment of the test claim legislation, the various statutory provisions regarding the application of the Brown Act created much confusion as to whether committees, regardless of their composition, fell under the requirements of the Act. However, numerous judicial decisions and opinions of the Attorney General found that the Brown Act essentially governed *all* meetings of a *quorum* of the legislative body of a local agency when the public's business was discussed.⁸

In 1993, just prior to the passage of the test claim legislation, this issue was finally resolved in the *Freedom Newspaper* case.⁹ In *Freedom*, a newspaper publisher sought a writ of mandate to compel a county employees retirement system board of directors to allow the public to attend meetings of the board's operations committee. The committee was advisory in nature and was composed of four members of the nine-member board. The Supreme Court held that since the operations committee was an advisory committee composed solely of board members *numbering less than a quorum of the board*, the committee was not a "legislative body" pursuant to the provisions of Government Code section 54952.3, and was therefore excluded from the open meeting requirements of the Brown Act. The *Freedom* Court agreed with a long-standing 1968 Attorney General Opinion that stated: "[w]e have consistently concluded that committees composed of *less than a quorum of the legislative body creating them and not established on a permanent basis for a continuing function are not subject to the open meeting requirements of that Act.*" (Emphasis supplied).¹⁰

Thus, the Commission finds that while standing committees with less than a quorum of the members of the legislative body were exempt from the requirements of the Brown Act under prior law, the test claim legislation now defines "standing committees, *irrespective of their composition*" as new bodies required to comply with the open session notice and agenda requirements imposed by section 54954.2.

Regarding the other five bodies identified in the test claim legislation, the Commission finds they are not new "legislative bodies" because they were identified in prior law as follows:

⁷ 79 Ops.Cal.Atty.Gen. 69, 72 (1996).

⁸ *Id.*, at page 69, fn 3.

⁹ *Freedom Newspapers, Inc., v. Orange County Employees Retirement System Board of Directors* (1993) Cal.4th 821, 832-833.

¹⁰ *Id.*, at pages 828-829.

- Governing body of a local agency

This body is identified as a "legislative body" in prior law in section 54952 and thus it is not a new body.

- Permanent decisionmaking committee or board created by formal action

Interested Person, Paul C. Minney, contends that permanent decisionmaking committees created by formal action were not subject to the Brown Act before the enactment of the test claim legislation. In his comments, he states:

Staff's conclusion [in the draft staff analysis] is predicated upon the assumption that the legislative body of a local agency can only create a "permanent decision making board" which may exercise the authority of the body that created it. This assumption is incorrect. For example, when a school district approves a charter school (by formal action) it creates a permanent body with decision making body [sic] that exercises authority broader than that granted to the school district...

The Commission disagrees. Under prior law, section 54952.2 stated:

As used in this chapter, "legislative body" also means *any* board, commission, committee, or similar multimember body which exercises *any authority* of a legislative body of a local agency *delegated* to it by that legislative body. (Emphasis added.)

Also, under prior law, section 54952.5 specifically included permanent boards and commissions of local agencies within the coverage of the Brown Act. That section stated:

As used in this chapter, "legislative body" also includes, but is not limited to, planning commissions, library boards, recreation commissions, *and other permanent boards or commissions* of a local agency. (Emphasis added.)

When determining the intent of a statute, the first step is to look at the statute's words and give them their plain and ordinary meaning. Where the words of the statute are not ambiguous, they must be applied as written and may not be altered in any way.¹¹ The plain language of former sections 54952.2 and 54952.5 include permanent boards and commissions as legislative bodies and any board or commission that exercises any authority delegated to it, i.e., decisionmaking authority.

Moreover, in their 1989 booklet, *Open Meeting Laws*, the Attorney General's Office determined that decisionmaking bodies were required to comply with the Brown Act before the enactment of the test claim legislation. In the booklet, the Attorney General's Office states:

Under current law, decision-making bodies would primarily be covered under section 54952 or 54952.2 and advisory committees under section 54952.3. However, section 54952.5 was invoked by this office to apply to a hearing

¹¹ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777; *Carrisales v. Department of Corrections* (1999) 21 Cal.4th 1132.

board of an air pollution control district. (71 Ops. Cal. Atty. Gen. 96 (1988).) Although there is not a published opinion or indexed letter precisely on point, we think that permanent committees (e.g., budget or finance committees) comprised solely of less than a quorum of the members of a board or commission were not intended to be covered by section 54952.5. (See discussion of less than a quorum exception in section C(6) at page 20 in this pamphlet.) *However, if such committees "exercise" enough "authority" "delegated" to them by a legislative body, they might be covered by section 54952.2 as a decision-making body rather than an advisory body.*

While the Attorney General's views do not bind the Commission, they are entitled to considerable weight. This is especially true here since the Attorney General regularly advises many local agencies about the meaning of the Brown Act and publishes a manual designed to assist local governmental agencies in complying with the Act's open meeting requirements.¹²

Accordingly, the Commission finds that permanent decisionmaking bodies created by formal action were subject to the Brown Act before the enactment of the test claim legislation and, thus, are not new.

- Temporary decisionmaking committee or board created by formal action.

This body is also identified as a "legislative body" in prior law under section 54952.2 as discussed above. Section 54952.2 stated:

As used in this chapter, "legislative body" also means *any* board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body.
(Emphasis added.)

For the same reasons discussed under the section analyzing permanent decisionmaking bodies, the Commission finds that temporary decisionmaking bodies created by formal action were subject to the Brown Act before the enactment of the test claim legislation and, thus, are not new.

- Permanent advisory committee or board created by formal action (except less than a quorum of the members)

This body is identified under prior law in sections 54952.3 and 54952.5. Section 54952.3 defined "legislative body" as *any* advisory committee created by formal action. In addition, section 54952.3 provides an exception for any advisory committee composed solely of less than a quorum of the members of the legislative body. Section 54952.5 also defined "legislative body" to include permanent boards or commissions of a local agency. Thus, the Commission finds that permanent advisory committees or boards created by formal action (except less than a quorum of the members) were "legislative bodies" under prior law.

¹² *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors*, *supra*, 6 Cal.4th at p. 829.

- Temporary advisory committee or board created by formal action (except less than a quorum of the members)

This body is identified under prior law in section 54952.3 as discussed above, and thus, the Commission finds that this body was a "legislative body" under prior law.

- Standing committees comprised of a quorum of the members of the legislative body

These bodies are also defined as a "legislative body" under prior law. Standing committees, by definition, are permanent committees that regularly consider a particular subject matter. When comprised of a quorum of the members of the legislative body, these committees fall under the definition of a committee with delegated authority since they are empowered to make decisions on behalf of the legislative body.¹³ In addition, standing committees comprised of a quorum of the members fall under the definition of "legislative body" in former Government Code sections 54952.3 and 54952.5 (i.e. permanent advisory committees of a local agency). Thus, the Commission finds that standing committees composed of at least a quorum of the members of the legislative body are not new bodies under the test claim legislation.

The chart below provides a summary of the Commission's findings:

Test Claim Legislation Section 54952	Prior Law Sections 54952, 54952.3, 54952.3, 54952.5
Governing body	§ 54952 Governing body
Local body created by state or federal statute	NEW
Permanent decisionmaking committee or board created by formal action	§ 54952.2 Any board, committee, body that exercises any authority of a legislative body <i>delegated</i> to it by the legislative body § 54952.5 Planning commissions, library boards, recreation commissions, and other <i>permanent</i> boards or commissions of a local agency
Temporary decisionmaking committee or board created by formal action	§ 54952.2
Permanent advisory committee or board created by formal action (except less than a quorum of the members)	§ 54952.3 Any advisory committee created by formal action (except less than a quorum of the members) § 54952.5 Planning commissions, library boards, recreation commission, and other <i>permanent</i> boards or commissions of a local agency
Temporary advisory committee or board created by formal action (except less than a quorum of the members)	§ 54952.3

¹³ Former Government Code section 54952.2 stated in relevant part as follows:

"...legislative body also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body."

Standing committees, irrespective of their composition (i.e. even those with less than a quorum of the members of the legislative body) with continuing subject matter jurisdiction, or a meeting schedule fixed by formal action.	NEW - standing committees with less than a quorum of the members. However, standing committees with a quorum of members of the legislative body are covered in prior law through §§ 54952.2, 54952.3 and 54952.5.
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Based on the foregoing, the Commission finds that Government Code sections 54952 and 54954.2, subdivision (a), of the test claim legislation constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for two new bodies (local bodies created by state or federal statute and standing committees with less than a quorum of the members of the legislative body with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action) to prepare and post an agenda of their meetings 72 hours prior to the meeting which contains a brief general description of each item to be transacted or discussed at the meeting.

Advisory Bodies Subject to the Notice & Agenda Requirements

In the *Open Meetings Act* (CSM-4257) test claim, the Commission determined that Government Code section 54954.2 imposed a reimbursable state mandated program upon "all legislative bodies," as defined, to post a notice and agenda 72 hours prior to the meeting of a legislative body. That section also required that the notice and agenda contain a brief general description of all items to be discussed at the meeting. Section 54954.2 was enacted in 1986 and applied to all legislative bodies, which by definition included advisory bodies before the enactment of the test claim legislation.

However, prior law (former Government Code section 54952.3, which was enacted in 1968) also *exempted* advisory bodies from the regular notice and agenda provisions of the Act and held them to significantly reduced notice requirements:

Meetings of such advisory commissions, committees or bodies...shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.

If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. *No other notice of regular meetings is required.* (Emphasis added.)

Thus, prior law, as specified in sections 54954.2 and 54952.3, imposed conflicting duties on advisory bodies. If an advisory body complied with section 54952.3 by not preparing and posting an agenda, did it violate section 54954.2? In other words, which statute constitutes prior law with respect to the duties imposed on advisory bodies?

Sutherland Statutory Construction, a treatise on statutory construction, explains that whenever the legislature enacts a provision, it has in mind previous statutes relating to the same subject matter. In the absence of any express repeal or amendment, the new provision is presumed to be in accord with the legislative policy embodied in those prior statutes. When a conflict

exists, the more specific statute controls over the more general one.¹⁴ However, where the conflict is irreconcilable, the statute that is the more recent of the two conflicting statutes prevails.¹⁵

In this case, the Commission finds the express language of section 54952.3 is more specific than the provisions of section 54954.2 and thus, prevails as prior law. Section 54952.3 specifically identified advisory commissions and committees as legislative bodies that were not required to prepare and post an agenda. They were only required to deliver notice of their meetings 24-hours prior to the meeting and to provide in their bylaws for the time and place of holding regular meetings. In contrast, section 54954.2 generally referred to "the legislative body of the local agency, or its designee," when describing the bodies to which the notice requirements applied. Thus, by the repeal of section 54952.3 by the test claim legislation, advisory bodies are now subject, for the first time, to the full notice and agenda requirements specified in section 54954.2, subdivision (a), of the Brown Act.

Therefore, the Commission finds that Government Code section 54954.2, subdivision (a), constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all permanent and temporary advisory bodies created by formal action (except less than a quorum of the members of the legislative body) to comply with the full notice and agenda requirements of the Brown Act by preparing and posting an agenda of their meetings 72 hours prior to the meeting which contains a brief general description of each item to be transacted or discussed at the meeting.

Part Two: Closed Session Requirements

Under prior law, the legislative body was required to state the reasons for a closed session either before or after the closed session and to publicly report the action and vote taken in closed session regarding the appointment, employment or dismissal of a public employee. The test claim legislation added four new closed session requirements that apply to all "legislative bodies" including those newly defined under the test claim legislation.

Notice and Agenda Requirements

The test claim legislation amended the notice and agenda provisions to include closed session items on the agenda. Section 54954.2 states, in relevant part, the following:

At least 72 hours before a regular meeting, the legislative body of a local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Underlined portion indicates amendments to this section by the test claim legislation).

¹⁴ *People v. Tanner* (1979) 24 Cal.3d 514, 521, where the California Supreme Court states that "[a] specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates."

¹⁵ 2B, Sutherland, Statutory Construction (5th Ed. 1994) § 51.02.

Under prior law, the legislative body was only required to state the general reason or reasons for the closed session either prior to or after holding the closed session and if desired, cite the statutory authority under which the session was being held.¹⁶ The test claim legislation now requires a brief general description of closed session items to be included on the agenda for the meeting.

Thus, the Commission finds that Government Code section 54954.2, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all "legislative bodies" defined in Government Code section 54952 to provide a brief general description of all items to be discussed in closed session on the agenda of the meeting.

Prior Disclosure Requirements

Under prior law, section 54957.7 only required a legislative body, prior to *or* after the closed session, to state the general reason for the closed session and to include the appropriate statutory authority, if desired. The test claim legislation amended this section to provide, in relevant part, as follows:

- (a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda.

The test claim legislation now requires all legislative bodies to disclose each item to be discussed in closed session prior to the start of the closed session.

Accordingly, the Commission finds that Government Code section 54957.7, subdivision (a), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all "legislative bodies" as defined in Government Code section 54952 to disclose, prior to holding a closed session, each item to be discussed in closed session.

Subsequent Reporting Requirements

Subdivision (b) was added to section 54957.7 by the test claim legislation and provides as follows:

- (b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

¹⁶ Former Government Code section 54957.7.

Section 54957.1, subdivision (a) of the test claim legislation added an extensive list of items requiring the legislative body to publicly report, either orally or in writing,¹⁷ the actions and votes taken in closed session for the following items:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as specified below:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

¹⁷ Government Code section 54957.1(b) provides in relevant part the following:

"Reports that are required to be made pursuant to this section may be made orally or in writing."

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

Under prior law, the sole reporting requirement for closed sessions under section 54957.1 was to report at the current or a subsequent meeting, any action taken and any roll call vote *to appoint, employ, or dismiss a public employee*.¹⁸ Other issues that could be discussed in closed session such as licensing matters, real estate negotiations or pending litigation did not require any reporting in a public session.¹⁹ The test claim legislation now requires the legislative body to reconvene into public, open session and report the actions and votes taken on the five new items listed above which were discussed in closed session.

Therefore, the Commission finds that Government Code sections 54957.7, subdivision (b), and 54957.1, subdivision (a), of the test claim legislation constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative bodies" in Government Code section 54952 to reconvene in public session prior to adjournment and report the five items identified in section 54957.1, subdivision (a) (1-4, 6) which were discussed in closed session.

Documentation Requirements

Subdivisions (b) and (c) of section 54957.1 of the test claim legislation concern the provision of documentation from closed sessions to members of the public. This section provides, in relevant part, as follows:

¹⁸ Former section 54957.1 stated the following:

"The legislative body of any local agency shall publicly report at the public meeting during which the closed session is held or at its next public meeting any action taken, and any roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the legislative body."

¹⁹ Government Code sections 54956.7, 54956.8, 54956.9, 54957.

(b)...The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendment for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the actions referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

Prior to the test claim legislation, section 54957.1 did not address writings. The subject of 'writings' was addressed in section 54957.5 which provided for the inspection and distribution of certain writings that were public records under the California Public Records Act. However, subdivision (e) of section 54957.5 provided that, "(T)his section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a legislative body of a local agency...". Thus, while prior law provided for the inspection and provision of certain writings distributed to the legislative body, it did not require the distribution of documentation from closed sessions to members of the public.

Accordingly, the Commission finds that Government Code section 54957.1, subdivisions (b) and (c), of the test claim legislation constitutes a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution for all bodies defined as "legislative bodies" in Government Code section 54952 to provide copies of documentation from the closed session within the specified timelines.

Issue 2: Does the test claim legislation impose costs mandated by the state pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514?

The remaining issue is whether there are increased costs mandated by the state. Government Code section 17514 provides in relevant part the following:

Costs mandated by the state" means any *increased costs* which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975...which mandates a new program or higher

level of service within the meaning of Section 6 of Article XIII B of the California Constitution. (Emphasis added.)

In addition, section 17556 provides in relevant part the following:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

- (a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

At the May 24, 2001 hearing, the Department of Finance contended that local agencies requested the enactment of the test claim legislation and, thus, there are no costs mandated by the state. Mr. Cedrik Zemitis testified on behalf of the Department of Finance as follows:

MR. ZEMITIS: Second, local request, we would note that at the time the test claim statute was considered by the legislature, it was clear that these bills were introduced at the behest of local governments. The author of most of the bills stated for the record at the time that existing law was amended specifically at the request of local agencies. Indeed, numerous legislative committee analyses support the author.

In addition, the California School Boards Association at the time stated that clarification of the existing Brown Act will not create additional costs to local government. In addition, the California State Association of Counties and numerous other local entities all officially supported the legislation because it would simplify and clarify the Brown Act with no additional costs.

While we do not have resolutions from all of the affected local entities, which would be in the thousands literally, representatives of those entities clearly sponsored the legislation as well as reported savings and no new costs. Therefore we believe any mandate would not be reimbursable.²⁰

In response, the claimant testified that the City of Newport Beach did not request legislative authority to implement the program nor did they sponsor the test claim legislation.²¹ In

²⁰ Hearing Transcript, May 24, 2001 Commission on State Mandates Hearing, page 14, line 25; page 15, lines 1-25; page 16, lines 1-7.

²¹ Hearing Transcript, May 24, 2001 Commission on State Mandates Hearing, page 29, lines 15-21.

addition, there is no evidence in the record of a resolution from any governing body of a local agency requesting authorization to implement the test claim legislation. Therefore, the Commission finds that Government Code section 17556, subdivision (a) does not apply in this test claim.

Further, section 17556, subdivision (e) provides that the commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

- (e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

The Department of Finance contends that while chapters 1136 and 1137 may have resulted in reimbursable state-mandated activities pertaining to certain notification requirements, these chapters may also result in offsetting savings to local governments by specifying that agenda descriptions be restricted to 20 or less words. The Department also contends that the test claim legislation results in cost savings to local governments by simplifying and clarifying the Brown Act. The Department did not comment on the new closed session requirements of the test claim legislation.

The original claimant, the County of Santa Clara, submitted a declaration to support their contention that the test claim legislation resulted in an increase in costs incurred by several County departments. Steve Conrad, SB 90 Coordinator for the County of Santa Clara declared on December 28, 1994 that an additional \$560 will be incurred per year by Santa Clara county to include closed session items on the agenda, and that an additional \$2,200 will be incurred per year by Santa Clara county to record closed session discussions in order to report in open session the items discussed in closed session, and that an additional \$6,300 will be incurred per year by Santa Clara county to prepare and post an agenda for the new bodies defined as "legislative bodies" in the test claim legislation.

In reviewing the language of the test claim legislation, there is no language that provides for offsetting savings resulting in no net costs to the claimants, nor does the test claim legislation include any additional revenue specifically intended to fund the mandate. While the Department of Finance contends that the test claim statutes may result in offsetting savings to the claimants by limiting the agenda descriptions to "20 words or less", the Commission finds that the language of the test claim legislation does not support this conclusion. Nor has the Department provided any documentary evidence to support their contention. Former Senator Kopp contends that the legislative intent of these amendments was to simplify and clarify the Brown Act. However, no documentary evidence has been provided to support this contention. Thus, the Commission finds that Government Code section 17556, subdivision (e) does not apply in this test claim.

Therefore, the Commission finds that the test claim legislation, which requires the legislative bodies of local agencies to perform a number of additional activities in relation to the open meeting requirements of the Brown Act, imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

CONCLUSION

Based on the foregoing, the Commission concludes that the test claim legislation (Government Code sections 54952, 54954.2, 54957.1, and 54957.7) imposes a reimbursable state-mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

Open Session Requirements

<u>Activity</u>	<u>Applies To</u>
To prepare and post an agenda at least 72 hours before a regular meeting containing a brief general description of each item of business to be transacted or discussed at the meeting. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	Local Bodies created by state or federal statute. Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action. Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Closed Session Requirements

<u>Activity</u>	<u>Applies To</u>
To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. [Gov. Code § 54954.2, subd. (a)]	All "legislative bodies"
To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. [Gov. Code § 54957.7, subd. (a)]	All "legislative bodies"
To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). [Gov. Code § 54957.7, subd. (b)]	All "legislative bodies"
To provide copies of closed session documents as required. [Gov. Code § 54957.1, Subd. (b) and (c)]	All "legislative bodies"

The Commission further concludes that all other statutes and code sections included in this test claim do not constitute a reimbursable state-mandated program.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95814.

June 29, 2001, I served the:

Adopted Statement of Decision

Brown Act Reform, CSM 4469

City of Newport Beach, Claimant

Government Code Sections 54952, 54954.2, 54957.1, and 54957.7

Statutes of 1993, Chapters 1136, 1137 & 1138

Statutes of 1994, Chapter 32

by placing a true copy thereof in an envelope addressed to:

Mr. Glen Everroad, Revenue Manager
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658

Mr. Glen Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 25, 2000, at Sacramento, California.


VICTORIA SORIANO

Commission on State Mandates

List Date: 03/16/2001

Mailing Information

Mailing List

Claim Number	Claimant	City of Newport Beach
CSM-4469		
Subject	54952, 54954.2, 54957.1, and 54957.7	
Issue	1136/93, 1137/93, 1138/93, 32/94	
	Brown Act Reform	

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Mr. Bruce Brugmann,
Bay Guardian

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San Francisco CA 94110

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State Controller's Office
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54952, 54954.2, 54957.1, and 54957.7

1136/93, 1137/93, 1138/93, 32/94

Brown Act Reform

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Finance

City Hall

Monterey CA 93940

Tel:

FAX:

Claim Number

CSM-4469

Claimant

City of Newport Beach

Subject

54952, 54954.2, 54957.1, and 54957.7

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Brown Act Reform

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Form Number

CSM-4469

Claimant

City of Newport Beach

Subject

54952, 54954.2, 54957.1, and 54957.7

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Brown Act Reform

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Interested Person

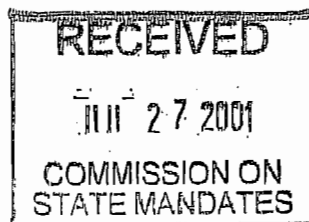


CITY OF NEWPORT BEACH

REVENUE DIVISION

3300 NEWPORT BLVD.
P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



July 26, 2001

Re: *Brown Act Reform*
Draft Parameters and Guidelines

Dear Ms. Higashi:

Pursuant to your regulations which require Draft Parameters and Guidelines be submitted within 30 days from notification of the adoption of the Statement of Decision, enclosed herewith please find the Draft Parameters and Guidelines.

Please be advised that the Draft Parameters and Guidelines for *Brown Act Reform* have been blended with those in existence for *Open Meetings Act*, which *Brown Act Reform* amended. The Draft Parameters and Guidelines have been written such that at such time as *Brown Act Reform* would be an annual claim, only one annual claim would be filed for both *Open Meetings Act* and *Brown Act Reform*. Additionally, the same methodologies employed in *Open Meetings Act* for agendas has been continued in *Brown Act Reform*. The flat rate has been further discounted using the implicit price deflator back to the 1993-94 fiscal year, which renders the flat rate for that year the sum of \$90.10 per agenda.

Because of all of the issues and hearings pertaining to *Open Meetings Act*, I would request that a prehearing conference be scheduled for *Brown Act Reform*, inviting those who worked most assiduously on *Open Meetings Act*.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Glen Everroad".

Glen Everroad
Revenue Manager

2003

)

DRAFT PARAMETERS AND GUIDELINES

Chapters 1136, 1137 and 1138, Statutes of 1993
Chapter 32, Statutes of 1994
Government Code, Sections 54952, 54954.2, 54957.1, and 54957.7

Brown Act Reform

I. SUMMARY AND SOURCE OF THE MANDATE

Government Code, sections 54952, 54954.2, 54957.1 and 54957.1, require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act (Government Code, Sections 54950 *et seq.*, hereinafter referred to as the "Brown Act"). Section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session.

On May 24, 2000, the Commission adopted its Statement of Decision that the test claim legislation constitutes a reimbursable state mandated program upon local governments within the meaning of Article XIII B, Section 6 of the California Constitution and Government Code, section 17514.

II. PRIOR TEST CLAIMS

On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim that added Government Code, sections 54954.2 and 54954.3 to the Brown Act. Section 54954.2 required the "legislative bodies" of local agencies for the first time to prepare and post agendas for public meetings at least 72 hours prior to the scheduled meeting. In addition, the agenda was to contain a brief description of each item to be discussed. Local agencies were also prohibited from taking action on any item that was not on the agenda. Section 54954.3 required that each agenda provide the public with the opportunity to address the legislative body during the meeting.

On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim, which was based on Government Code, section 54952 and Education Code, Section 35147 addressed the application of the open meeting act provisions of the Brown Act to specified school site councils and advisory committees of school districts.

III. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, and special districts, as defined in Government Code, section 17518 are eligible claimants.

IV. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code, prior to its amendment by Statutes of 1998, Chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on December 29, 1994. Therefore, costs incurred for Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994 are eligible for reimbursement on or after July 1, 1993.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

Claimants may use actual time, standard time or the flat rate specified in section VII for costs incurred beginning in fiscal year 1993-94, for those costs related to reimbursement for agenda preparation and posting, including closed session items. Claimants must use the actual time methodology for claiming costs related to training, subsequent reporting of action taken in closed session, and providing copies of documents approved or adopted in closed session, beginning in fiscal year 1993-94.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed except as otherwise allowed by Government Code, section 17564.

Initial years' costs shall not include any costs which have been claimed or reimbursed pursuant to *Open Meetings Act*, pursuant to Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000. Annual claims, commencing with the 2001-2002 fiscal year shall include all costs for *Open Meetings Act* as well as *Brown Act Reform*.

IV. REIMBURSABLE ACTIVITIES

A. Scope of Mandate

Local agencies shall be reimbursed for the increased costs which they are required to incur to prepare and post, at a site accessible to the public and at least 72 hours before the meeting, a single agenda containing a brief general description of each item of business to be transacted or discussed at any one regular meeting of the legislative body, and citing the time and location of the regular meeting. The agenda shall also include items to be discussed in closed session, as required by law. Further, every agenda for a regular meeting must state that there is an opportunity for members of the public to address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body, subject to the exceptions stated therein. Additionally, every session which has a closed session shall include the reporting requirements and

disclosures pursuant to Government Code, Section 54957.1 of the action taken in closed session. Additionally, documentation provided from closed session within specified timelines is also included. Because of the technical requirements of the Brown Act, training on *Brown Act Reform* as well as periodic training of new members to the legislative body are also included within the scope of the mandate.

For each eligible claimant meeting the above criteria, the following cost items are reimbursable:

B. Reimbursable Activities of Government Code, Sections 54952, 54954.1, 54954.3, 54954.3, 54954.4, 54957.1 and 54957.7 pursuant to Chapter 641, Statutes of 1986, Chapter 238, Statutes of 1991, Chapters 1136, 1137 and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994.

1. Increased costs to prepare a single agenda for a regular meeting of a legislative body of a local agency containing a brief general description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session and citing the time and location of the regular meeting.

2. Costs to post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda for a regular meeting must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein.

3. Increased costs to include subsequent reporting requirements of action taken in closed session, including:

a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8;

b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation, as set forth in Section 43956.9;

c. Approval given to its legal counsel of a settlement of pending litigation at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported as specified in Section 54956.9;

d. Disposition reached as to claims discussed in closed session shall be reported as specified in Section 54956.95, including identification of the name of the claimant, the name of the local agency claimed against, substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant;

e. Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session as set forth in Section 54957; and

f. Approval of an agreement concluding labor negotiations with represented employees after the agreement is final and has been accepted or ratified by the other party, as set forth in Section 54957.6.

4. Providing copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the time lines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified.

5. Training to the members of the legislative body on the new requirements of *Brown Act Reform*, as well as training to all new members of the legislative body on the requirements of the Brown Act prior to or upon attaining office. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, all time of the trainer and legislative members is reimbursable. Additionally, all time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable.

VII. CLAIM PREPARATION AND SUBMISSION

Each claim for reimbursement for all costs incurred must be timely filed and set forth a listing of each open meeting agenda for which reimbursement is claimed under this mandate.

A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items

For each type or name of meeting claimed during a fiscal year, select one of the following reimbursement options. For example, all city council meetings in a given fiscal year may be claimed on only one basis: actual time, standard time or flat-rate. If standard time is selected, all city council meetings must be claimed using this basis for the entire year. However, all city council meetings could be claimed on an actual cost basis during a subsequent fiscal year.

1. Actual Time

List the meeting names and dates. Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

Counties and cities may claim indirect costs pursuant to section VII B.

2. Standard Time

a. Main Legislative Body Meetings of Counties and Cities

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", "public comments", by 30 minutes and then by the blended productive hourly rate of the involved employees.

Counties and cities may claim indirect costs pursuant to section VII E.

b. Special District Meetings, and County and City Meetings Other Than Main Legislative Body

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as "adjournment", "call to order", "flag salute", "public comments", by 20 minutes and then by the blended productive hourly rate of the involved employees.

Special districts, counties and cities may claim indirect costs pursuant to section VII E.

c. School and Community College Districts and County Offices of Education

List the meeting names and dates. For each meeting, multiply the number of agenda items times the minutes per agenda item for County Offices of Education and for districts, by enrollment size, times the blended productive hourly rate of the involved employees. The minutes per agenda item for County Offices of Education and for districts by enrollment size are:

County Offices of Education:	45 minutes
Districts:	
Enrollment 20,000 or more:	45 minutes
Enrollment 10,000 - 19,999:	15 minutes
Enrollment less than 10,000:	10 minutes

School and community college districts and County Offices of Education may claim indirect costs pursuant to Section VII E.

3. Flat Rate

List the meeting names and dates. Multiply the uniform cost allowance by the number of meetings. Using the November 30, 2000 amended Parameters and Guidelines for *Open Meetings Act* with a 1997-98 base year rate of \$100, for fiscal year 1993-94, the uniform cost allowance is \$90.10. The uniform cost allowance shall be adjusted each subsequent year by the Implicit Price Deflator referenced in Government Code section 17523.

B. Reimbursement for Training, Subsequent Reporting of Action Taken in Closed Session, and Providing Copies of Documents Approved or Adopted in Closed Session

List the meeting names and dates, or the dates of training. Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

C. Services, Equipment and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials or equipment acquired which have been consumed or expended specifically for the purposes of this mandate.

D. Fixed Assets

List the cost of fixed assets that have been acquired specifically for the purpose of this mandate. If a fixed asset is acquired for the *Open Meeting Act* and/or *Brown Act Reform* programs but is utilized in some way not directly related to the programs, only the pro-rata portion of the asset which is used for the purposes of the program is reimbursable.

E. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Cities, Counties and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall

exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the two following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

School Districts

1. School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

2. County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the State Department of Education.

3. Community colleges have the option of using (1) a federally approved rate, using the cost accounting principles from the Office of Management and Budget Circular A-21 "Cost Principles of Educational Institutions", (2) the rate calculated on State Controller's Form FAM-29C, or (3) a 7% indirect cost rate.

VIII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of and the validity of such costs. For those entities that elect reimbursement pursuant to Option 2, the standard time methodology in VII A 2,

documents showing the calculation of the blended productive hourly rate and copies of agendas shall be sufficient evidence. For those entities that elect reimbursement pursuant to Option 3, the flat-rate methodology in VII A.3, copies of agendas shall be sufficient evidence. Pursuant to Government Code, Section 17558.5, the supporting documents must be kept on file by the agency submitting the claim for a period of up to two years after the end of the calendar year in which the reimbursement claim is filed, and made available at the request of the State Controller or his agent. The blended productive hourly rate, used in claiming standard or unit time reimbursements, may be calculated by determining the percentage of time spent by persons or classifications of persons on the reimbursable activities and multiplying the productive hourly rate (including salaries, benefits and indirect costs, if not claimed elsewhere) for each person or classification of persons times the percentage of time spent by that person or classification of persons. Claimants may determine a percentage allocation for the person or classification of persons in a base fiscal year and use that percentage allocation for subsequent future years by multiplying the base year percentages times the productive hourly rate for that person or classification of persons for the fiscal year of the reimbursement claim.

For example, a city manager may determine that the percentage of time spent on the reimbursable activities by various classifications in a base year of fiscal year 1998-99 was as follows:

City Manager	17%
City Attorney	15%
City Clerk	36%
Department Managers	9%
Secretaries	23%
Total	100%

The city determines that the productive hourly rate (salaries, benefits, and indirect costs) for fiscal year 2000-01 for each classification are as follows:

	Salary	Benefits	Indirect Cost Rate	Indirect Costs	Productive Hourly Rate
City Manger	\$60	\$12	29%	\$13	\$85
City Attorney	\$55	\$10	30%	\$15	\$80
City Clerk	\$40	\$8	31%	\$12	\$60
Department Manager	\$45	\$9	30%	\$11	\$65
Secretaries	\$18	\$5	25%	\$7	\$30

The blended productive hourly rate for fiscal year 2000-01 is determined by multiplying the percentages in the base year times the productive hourly rate in the fiscal year claimed, and adding the totals, as follows:

City Manager	17%	\$85	\$14.25
City Attorney	15%	\$80	\$12.00
City Clerk	36%	\$60	\$21.60
Department Managers	9%	\$65	\$ 5.85
Secretaries	<u>23%</u>	<u>\$30</u>	<u>\$ 6.90</u>
Total	100%		\$60.80

The city's claim would be determined by multiplying the blended productive hourly rate times the minutes per agenda item times the number of agenda items.

IX. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings that the claimant experiences, as a direct result of this mandate, must be deducted from the costs claimed. In addition, reimbursement for this mandate from any other source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

X. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant will be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.

XI. PARAMETERS AND GUIDELINES AMENDMENTS

Any eligible claimant or state agency may petition the Commission to amend the standard time and flat rate provisions stated herein. Pursuant to Title 2, California Code of Regulations, section 1183.2, parameters and guidelines amendments filed before the deadline for initial claims as specified in the claiming instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15, following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.



DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

GRAY DAVIS, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

August 17, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

Pursuant to your letter of August 2, 2001, the Department of Finance has reviewed the Proposed Parameters and Guidelines submitted by the City of Newport Beach (claimant). The Proposed Parameters and Guidelines pertain to the "Statement of Decision" adopted by the Commission on State Mandates (Commission) on June 28, 2001, for the test claim Brown Act Reform, CSM 4469.

As the result of our review of the Proposed Parameters and Guidelines, we have concluded that the proposal does not fairly reflect the Commission's "Statement of Decision" on the test claim that was adopted on June 28, 2001, and recommend the changes described below to make the proposal reflective of the decision.

The cost items identified in Section IV, B3 are the increased costs to include subsequent reporting requirements of action taken in a closed session meeting of a legislative body. The Commission's adopted Statement of Decision does not identify these reporting requirements as reimbursable activities. Therefore, Section IV, B3 should be deleted from the Proposed Parameters and Guidelines.

The cost items identified in Section IV, B5 are costs for training members of legislative bodies on the requirements of the test claim Brown Act Reform, CSM 4469. The Commission's adopted Statement of Decision does not identify these reporting requirements as reimbursable activities. Therefore, Section IV, B5 should be deleted from the Proposed Parameters and Guidelines.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your August 2, 2001, letter have been provided with copies of this letter via either United States mail or, in the case of other State agencies, interagency mail service.

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AUG 20 2001

**COMMISSION ON
STATE MANDATES**

Ms. Higashi
August 17, 2001
Page Two

If you have any questions regarding this letter, please contact Cedrik Zemits, Principal Program Budget Analyst at (916) 322-2263 or Jim Lombard, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,


SHELLEY MATEO
Program Budget Manager

cc: Attached list

PROOF OF SERVICE

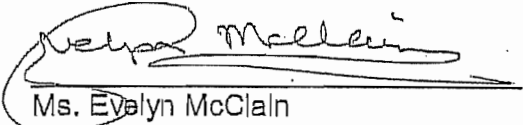
Test Claim Name: Brown Act Reform
Test Claim Number: CSM 4469

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8 Floor, Sacramento, CA 95814.

I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Sacramento, California; and (2) to State agencies in the normal pickup location at 915 L Street, 8 Floor, for interagency mail service, addressed as to the attached list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Ms. Evelyn McClain

Sacramento August 17th 2001
Place and Date Declaration was Executed

**RESPONSE TO DEPARTMENT OF FINANCE
BROWN ACT REFORM**

DRAFT PARAMETERS AND GUIDELINES

Chapters 1136, 1137 and 1138, Statutes of 1993
Chapter 32, Statutes of 1994
Government Code, Sections 54952, 54954.2, 54957.1, and 54957.7

This response is to the letter of the Department of Finance to Paula Higashi from Shelley Mateo, dated August 17, 2001, commenting upon the Draft Parameters and Guidelines.

The first cost item to which the Department of Finance objects is the reporting out requirement from Closed Sessions. The first page of the Statement of Decision states the background and findings of the Commission, which state, in pertinent part:

"The test claim legislation, Government Code sections 54952, 54954.2, 54957.1 and 54957.7, requires the "legislative bodies" of local agencies [footnote omitted] to comply with certain changes to the Ralph M. Brown Act (Gov. Code § 54950 et seq., hereinafter referred to as the Brown Act or the Act). [Footnote omitted.] Section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and, section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session."

Thus, from the very beginning, the Commission has recognized the requirements to "report out" certain actions taken in closed session.

Furthermore, there is a lengthy discussion (commencing at page 13) of the various requirements now imposed on the conduct of closed sessions, including the reporting out requirements. The Commission specifically acknowledges that Section 54957.1, subdivision (a) requires the legislative body to publicly report, either orally or in writing, various actions and votes taken in closed session, and then the Statement of Decision proceeds to list, at length, the various items which must be disclosed. (*See, Statement of Decision*, commencing at page 15.)

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SEP 13 2001

**COMMISSION ON
STATE MANDATES**

Accordingly, the City of Newport Beach respectfully submits that the Department of Finance is in error when it states that the Statement of Decision "does not identify these reporting requirements as reimbursable activities."¹

The second issue with which the Department of Finance takes issue is the issue of costs for training members of legislative bodies on the requirements of the Brown Act. The objection then goes on to state: "The Commission's adopted Statement of Decision does not identify these reporting requirements as reimbursable activities." It is believed that the Department of Finance stated its objection to the training component erroneously.

However, in order to address any objections the Department of Finance may have to the training component, the following should be noted. At the hearing on the test claim at the May 24, 2001 meeting of the Commission, Ms. Stone, on behalf of the test claimant, noted that the training component would be requested as part of the Parameters and Guidelines. Not only do the minutes of the hearing reflect same, but the minutes also reflect the following: "Member Steinmeier submitted that it was appropriate for Ms. Stone to request the training component during the parameters and guidelines phase, since it is not specifically mentioned in the bill, but naturally flows from the mandate. Member Steinmeier also noted that, in her experience on a school board, this legislation did necessitate more work on the part of the people preparing the agenda to make sure the brief description was accurate so they were not challenged."

As the Commission's staff has noted previously, pursuant to 2 California Code of Regulations, Section 1183.1(a)(4), the parameters and guidelines are allowed to include "a description of the most reasonable methods of complying with the mandate."

Just as the state's agencies must comply with the Bagley-Keene Open Meeting Act (Government Code, Section 11120, et seq.), local agencies must comply with the Ralph M. Brown Act. As submitted with the test claim filing, there are substantial penalties for failure to properly comply, including having all actions taken in contravention of the Act being deemed void.

Most legislative bodies do not have members in perpetuity; rather, they are elected or appointed in terms, being any where from two, four or more years. It is not uncommon for the main legislative body of a county or city to have a change in the majority of its membership. Given the draconian penalties, which are imposed for failure to comply with the Act, the most reasonable method of assuring compliance is to have a training session for new members, and frequently a refresher for existing members.

The requirement for training was never so much needed as when the test claim legislation became effective. For the first time, many boards and commissions and other legislative bodies, which had previously operated without any requirement for compliance, now had to learn the intricacies and consequences of the failure to comply. Additionally, those legislative bodies, which had previously operated under the Brown Act, now had to learn and understand the ramifications of the changes, particularly

¹ See Letter of August 17, 2001 to Paula Higashi from Shelley Mateo.

boards of supervisors and city councils. Additionally, the consequences of the changes to closed session were also of substantial import.

When a new and technical piece of legislation which must be implemented by lay persons is enacted, a necessary consequence is the training of those individuals in its provisions. This is a continuing obligation when, given the nature of legislative bodies, the composition changes on a regular basis.

CERTIFICATION

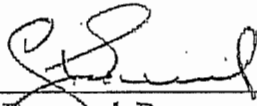
DECLARATION OF GLEN EVERROAD

I, Glen Everroad, make the following declaration under oath:

I am the Revenue Manager for the City of Newport Beach, and as part of my duties, I filed the substitution of test claimant. Also, as part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

That I have reviewed the Response to Department of Finance, Brown Act Reform, Draft Parameters and Guidelines, and based upon my information and belief, I believe it to be true and correct, and hereby certify same.

I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true. This declaration is executed this 10 day of September 2001, at Newport Beach, California.



Glen Everroad, Revenue Manager

DECLARATION OF SERVICE

State of California
County of Sacramento

I am at all times herein mentioned, over the age of eighteen years, and not a party to nor interested in the within matter. I am employed by DMG-MAXIMUS, INC. My business address is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841, County of Sacramento, State of California.

That on the 12th day of September, 2001, I served the Response to Department of Finance, *Brown Act Reform*, Draft Parameters and Guidelines, CSM-4469, on the interested parties by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United State mail at Sacramento, California, addressed as set forth in the Attachment 1, attached hereto and incorporated herein by reference.

That I am readily familiar with the business practice of DMG-MAXIMUS, INC. for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United State mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 12th day of September, 2001 at Sacramento, California.


Declarant

ATTACHMENT 1

Mr. James Lombard, Principal Analyst (A-15)
Department of Finance
915 L Street, Room 8020
Sacramento, CA 95814

Ms. Carol Berg, Ph.D.
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Mr. Paul Abelson
County of Contra Costa
Auditor-Controller's Office
625 Court Street, Room 103
Martinez, CA 94553

Ms. Chris Cetti
County of Sacramento
General Accounting
700 H Street, Room 4650
Sacramento, CA 95814-1276

Mr. Ram Vankatesan
SB-90 Coordinator
County of Santa Clara
70 West Hedding Street
2nd Floor, East Wing
San Jose, CA 95110

Mr. Glenn Engle
State Controller's Office
3301 C Street, Room 501
Sacramento, CA 95814

Mr. John Logger
County of San Bernardino
Office of the Auditor/Controller
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

Mr. James B. Lindholm, Jr.
County Counsel
County of San Luis Obispo
County Government Center, Room 386
San Luis Obispo, CA

Mr. Jim Cunningham
San Diego Unified School District
4100 Normal Street, Room 2243
San Diego, CA 92103-2682

Mr. Ernie Silva
League of California Cities
1400 K Street
Sacramento, CA 95814

Mr. Andy Glass, Accounting Manager
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Ms. Patricia Healy
City of Los Angeles
Office of the City Clerk
City Hall, Room 395
Los Angeles, CA 90012

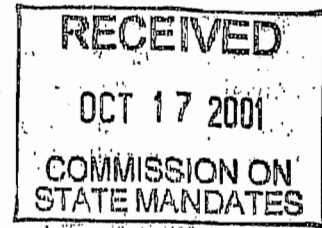
Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Richard Whitmore, Deputy Superintendent
Department of Education
Administration Branch
721 Capitol Mall, Room 524
Sacramento, CA 95814



LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

October 15, 2001



Ms. Paula Higashi, Executive Director
 Commission on State Mandates
 980 Ninth Street, Suite 300
 Sacramento, California 95814

PAUL C. MINNEY
 JAMES E. YOUNG
 MICHAEL S. MIDDLETON
 DANIEL I. SPECTOR
 LISA A. COLE
 AN J. MCKECHNIE
 DAVID E. SCRIBNER
 PHILLIP MURRAY
 JESSICA J. HAWTHORNE

Re: **Comments on Claimant's Proposed Parameters and Guidelines**
Brown Act Reform, CSM 4469
 City of Newport Beach, Claimant
 Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
 Statutes of 1993, Chapters 1136, 1137, and 1138
 Statutes of 1994, Chapter 32

Dear Ms. Higashi:

On July 26, 2001, the City of Newport Beach (claimant) submitted its Proposed Parameters and Guidelines for the *Brown Act Reform* Test Claim. In its filing, the claimant proposes to consolidate the Parameters and Guidelines for the *Open Meetings Act* and *Brown Act Reform* Test Claims. On August 17, 2001, the Department of Finance (DOF) submitted comments on the claimant's Proposed Parameters and Guidelines. DOF contends that Commission's Statement of Decision adopted on June 28, 2001 does not support several activities included in the claimant's Proposed Parameters and the Guidelines. Mandated Cost Systems, Inc. (MCS) submits these comments to address DOF's comments and the exclusion of school districts as eligible claimants under the claimant's Proposed Parameters and Guidelines.

Section IV, Subdivision B(3) Activities Not Included in Commission's Statement of Decision

DOF states:

"The cost item identified in Section IV, B3 are the increased costs to include subsequent reporting requirements of action taken in a closed session meeting of a legislative body. The Commission's adopted Statement of Decision does not identify these reporting requirements as reimbursable activities. Therefore, Section IV, B3 should be deleted from the Proposed Parameters and Guidelines."¹

¹ Department of Finance comments dated August 17, 2001 at page 1.

The Commission's Statement of Decision provides that the activities associated with reconvening in open session before adjournment to report actions/votes taken in closed session pursuant to Government Code section 54597.1, subdivisions (a)(1)-(4), and (6) are reimbursable. Therefore, the Commission should remove B.3., subdivision (e), which would provide reimbursement for activities associated with reporting any action taken and any roll call vote to appoint, employ, or dismiss a public employee – an activity the Commission determined to be required under prior law.

Section IV, Subdivision B(5) Activities Not Included in Commission's Statement of Decision

DOF states:

"The cost items identified in Section IV, B5 are costs for training members of legislative bodies on the requirements of the test claim Brown Act Reform, CSM 4469. The Commission's adopted Statement of Decision does not identify these reporting requirements as reimbursable activities. Therefore, Section IV, B5 should be deleted from the Proposed Parameters and Guidelines."²

The Commission's Statement of Decision does not *specifically* provide for reimbursement related to training. The reason for this omission is because the provision of training is a matter of boilerplate in the Parameters and Guidelines. The Commission has long recognized that training claimant staff to perform the mandated activities is a required downstream activity that claimants must engage in to properly effectuate the mandated program. Therefore, the language included by the claimant in its Proposed Parameters and Guidelines is appropriate based on past practices of the Commission.

Omission of "School Districts" From the "Eligible Claimants" Section

In its Statement of Decision for the *Brown Act Reform* Test Claim, the Commission found that the test claim legislation imposed additional activities upon "legislative bodies" of "local agencies." Specifically, legislative bodies must perform new activities related to the preparation and posting of agendas for open session meetings, include descriptions of items discussed during closed session, disclose in an open meeting, before and after a closed session, the items to be discussed and those that were discussed, and provide copies of closed session documents as required.

The claimant's Proposed Parameters and Guidelines provide that eligible claimants are limited to:

"Counties, cities, a city and county, and special districts, as defined in Government Code, section 17518...."³

MCS views this as a simple oversight by the claimant for two reasons. First, the most recent *Open Meetings Act* Parameters and Guidelines properly list "school districts" as eligible claimants.⁴ Second, the Commission clearly considered school districts as an eligible claimant for the activities outlined in the *Brown Act Reform* Test Claim.

² *Ibid.*

³ Claimant's Proposed Parameters and Guidelines at page 1.

⁴ See November 30, 2000 version of the *Open Meetings Act* Parameters and Guidelines at page 1.

On page 1 of the Statement of Decision, the Commission finds:

"The test claim legislation, Government Code sections 54952, 54954.2, 54957.1 and 54957.7, requires 'legislative bodies' of local agencies (footnote omitted) to comply with certain changes to the Ralph M. Brown Act (Gov. Code § 54950 et seq.). . . ."

In footnote 1 on page 1, the Commission recognized that the Ralph M. Brown Act defines "local agency" to include a county, city, city and county, town, *school district*, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency. As such, the activities imposed upon "legislative bodies" of any "local agency" impose activities upon all entities defined in the Ralph M. Brown Act, which includes school districts. Moreover, the fact that the "Conclusion" section of the *Brown Act Reform* Statement of Decision provides that the test claim legislation imposes reimbursable activities upon local governments is not fatal to the inclusion of school districts as eligible claimants in the Parameters and Guidelines. Since the Commission's Statement of Decision provides for the proper definition of a "local agency" under the Ralph M. Brown Act, the "Eligible Claimants" section of the Parameters and Guidelines may include similar language. Parameters and Guidelines are developed from the Statement of Decision as a whole, not simply from the "Conclusion" section.

Therefore, MCS suggests including the "Eligible Claimants" language from the *Open Meetings Act* Parameters and Guidelines in the *Brown Act Reform* Parameters and Guidelines as outlined below:

III. ELIGIBLE CLAIMANTS

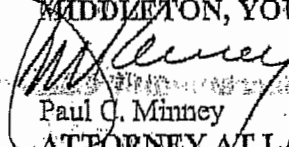
Any city, county, school or special district that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

Providing this version of the "Eligible Claimants" definition is consistent with both the *Open Meetings Act* Parameters and Guidelines and the Commission's Statement of Decision on the *Brown Act Reform* Test Claim.

If you have questions or comments concerning this submittal, please feel free to contact me at (916) 646-1400.

Sincerely,

LAW OFFICES OF SPECTOR,
MIDDLETON, YOUNG & MINNEY, LLP


Paul C. Minney
ATTORNEY AT LAW

Cc: Steve Smith, Mandated Cost Systems, Inc.
Mail List

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

I am employed in the county of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is 7 Park Center Drive, Sacramento, California 95825.

On October 15, 2001, I served the foregoing document(s) described as

Comments on Claimant's Proposed Parameters and Guidelines
Brown Act Reform
CSM 4469

to the persons/parties listed on the attached Mailing List and to the Commission on State Mandates via first class mail. Mail list recipients receiving this via facsimile are listed below:

Mr. Ted Buckley, Long Beach Unified School District
Mr. Andy Nichols, Centration, Inc.
Mr. Arthur Palkowitz, San Diego City Schools
Ms. Pam Stone, DMG-MAXIMUS

I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 15, 2001, at Sacramento, California.



LANI WOODS

Claim Number

CSM-4469

Claimant

County of Newport Beach

54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

Mr. Paul Abelson, Interested person
Contra Costa County

625 Court Street, Room 103
Martinez CA 94553

Tel: (000) 000-0000
FAX: (916) 445-0278

Dr. Carol Berg, Ph. D,
Education Mandated Cost Network

1121 L Street Suite 1060
Sacramento CA 95814

Tel: (916) 446-7517
FAX: (916) 446-2011

Mr. Bruce Bruggmann,
Bay Guardian

520 Hampshire
San Francisco CA 94110

Tel: (916) 000-0000
FAX: (916) 000-0000

Mr. Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
3301 C Street Suite 500
Sacramento CA 95816

(B-8), Acting Section Manager

Tel: (916) 323-2364
FAX: (916) 323-6527

Interested Party

Mr. Ted Buckley, Legal Advisor
Long Beach Unified School District

1515 Hughes Way Room 235
Long Beach CA 90810-1839

Tel: (562) 997-8251
FAX: (562) 997-8092

Ms. Chris Cetti, SB90/Grant Coord.
County of Sacramento
SB90/Grant Coordinator
700 H Street, Rm. 4560
Sacramento Ca 95814-1276

Tel: (916) 000-0000
FAX: (916) 000-0000

Claim Number

CSM-4469

Claimant

County of Newport Beach

54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

Ms. Annette Chinn,
Cost Recovery Systems

705-2 East Bldwell Street #294
Folsom CA 95630

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FAX: (916) 939-7801

Mr. Jack Dilles, Finance Director
City of Scotts Valley

One Civic Center Drive
Scotts Valley CA 95066

Tel: (831) 438-2324
FAX: (831) 438-2793

Mr. William A. Doyle, Mandated Cost Administrator
San Jose Unified School District

1153 El Prado Drive
San Jose CA 95120

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FAX: (408) 997-3171

Mr. James Erickson, City Administrator
City of Milbrae

621 Magnolia Ave.
Milbrae CA 94030

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FAX: (916) 000-0000

Ms. Pam Erlandson, Revenue Office
City of Monterey

Finance
City Hall
Monterey CA 93940

Tel:
FAX:

Mr. Dewey Evans, Finance Director
City of Monterey

Finance
City Hall
Monterey CA 93940

Tel: (916) 000-0000
FAX: (916) 000-0000

Claim Number

CSM-4469

Claimant

County of Newport Beach

Subject

54952, 54954.2, 54957.1, and 54957.7

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

Mr. Glen Everroad, Revenue Manager
City of Newport Beach

3300 Newport Beach P. O. Box 1768
Newport Beach CA 92659-1768

Tel: (949) 644-3127
FAX: (949) 644-3339

Mr. Terry Francoe,
First Amendment Coalition

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Sacramento Ca 95825

Tel: (916) 000-0000
FAX: (916) 000-0000

Mr. Andy Glass, Accounting Manager
City of Dana Point

33282 Golden Lantern
Dana Point CA 92629

Tel: (916) 000-0000
FAX: (916) 000-0000

Phoebe Graubard, Legal Counsel
Attorney at Law

P.O. Box 2048
Fort Bragg CA 95437

Tel: (707) 964-3525
FAX: (707) 964-3525

Mr. Scott Hannon,
Department of Education

560 J Street, Suite 170
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Tel: (916) 323-1024
FAX: (916) 323-6061

Ms. Patricia Healy,
City of Los Angeles

Office of the City Clerk City Hall Room 607
Los Angeles CA 90012

Tel: (916) 000-0000
FAX: (916) 000-0000

Claim Number

CSM-4469

Claimant

County of Newport Beach

54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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Claim Number

CSM-4469

Claimant

County of Newport Beach

54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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Claim Number

CSM-4469

Claimant County of Newport Beach

54952, 54954.2, 54957.1, and 54957.7

Subject

1136/93, 1137/93, 1138/93, 32/94

Issue

Brown Act Reform

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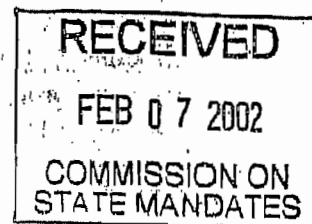


KATHLEEN CONNELL

Controller of the State of California

February 8, 2002

Ms. Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



RE: PARAMETERS AND GUIDELINES BROWN ACT REFORM, CSM 4469
STATUTES OF 1993, CHAPTERS, 1136, 1137, & 1138
STATUTES OF 1994, CHAPTER 32
GOVERNMENT CODE (GC) SECTIONS 54952, 54954.2, 54957.1, AND
54957.7

Dear Ms. Opie:

We have reviewed the proposed amendments to the Parameters and Guidelines (P's & G's) submitted by the City of Newport Beach for the above referenced subject matter. The State Controller's Office (SCO) recommends the Commission on Mandates (COSM) review the proposed P's & G's to ensure that all reimbursable components are in accordance with the adopted Statement of Decision. However, here are some suggested amendments; additions are underlined, deletions have strike-throughs.

I. SUMMARY OF MANDATE

"Government Code, sections 54952, 54954.2, and 54957.1 require that "legislative bodies" of local agencies comply with certain changes to the Ralph M. Brown Act (Government Code, sections 54950 *et seq.*, hereinafter referred to as the "Brown Act") section 54952 clarifies and changes the definition of "legislative body"; section 54954.2 requires closed session items to be listed on the meeting agenda; section 54957.1 requires the reporting of closed session items after the closed session and the provision of closed session documents; and section 54957.7 requires the disclosure of certain closed session items both prior to and after the closed session."

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SACRAMENTO 300 Capitol Mall, Suite 1850, Sacramento, CA 95814 (916) 445-2636
LOS ANGELES 600 Corporate Pointe, Suite 1150, Culver City, CA 90230 (310) 342-5678
1203

Section 54954.2 of the Government Code was added by Chapter 641/86 to require that the legislative body of the local agency, or its designee post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting, in a location freely accessible to the public.

Section 54954.3 was added to the Government Code by Chapter 641/86 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

"On November 30, 2000, the COSM adopted amendments to the P's & G's for the Open Meetings Act (OMA), and previously, on May 24, 2000, the COSM adopted its Statement of Decision that the test claim legislation constitutes an additional reimbursable state mandate upon local governments within the meaning of Article XI11B, Section 6 of the California Constitution and Government Code, section 17514." Therefore, the reimbursable activities of the Open Meeting Act (OMA) and the Brown Act Reform (BAR) identified in the Statement of Decision adopted by the COSM, are combined to establish the Brown Act Reform (BAR) program.

III. ELIGIBLE CLAIMANTS

"Counties, cities, a city and county and special districts as defined in G. C. section 17,518 are eligible claimants. Any city, county, school, or special district which incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs."

The schools were not identified as eligible claimants. Since this mandate combines the prior OMA program with the new BAR activities to form the BAR, schools are eligible claimants. Schools are included in the definition of a local agency as referenced in the COSM's adopted Statement of Decision.

IV. PERIOD OF REIMBURSEMENT

"...Initial years' costs shall not include any costs which have been claimed were claimable or reimbursed pursuant to Open Meeting Act pursuant to Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000." Actual costs incurred for the OMA program must be claimed as prescribed in the

Controller's Claiming Instructions No's 2000-15 and 2000-16 for local agencies and schools, respectively.

IV. V. REIMBURSABLE ACTIVITIES

- B. "Reimbursable Activities of Government Code (GC), Sections 54952, ~~54954.1~~, 54954.2, 54957.1 and 54957.7 pursuant to Chapter 641, Statutes of 1986, Chapter 238, Statutes of 1991, Chapters 1136, 1137, and 1138, Statutes of 1993 and Chapter 32, Statutes of 1994.

The reimbursable activities for the OMA and for the BAR have been separated to clearly identify the reimbursement activities that may be filed as initial claim reimbursable activities.

Open Meetings Act Reimbursable Activities

1. Increased costs to prepare a single agenda for a regular meeting, of a legislative body of a local agency, containing a brief general description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session and citing the time and location of the regular meeting, (GC section 54954.3)
2. Costs to post a single agenda 72 hours before a meeting, in a location freely accessible to the public. Further, every agenda for a regular meeting must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (GC section 54954.2)

Brown Act Reform Reimbursable Activities

1. "Increased costs to includes subsequent reporting requirements of action taken in closed session, including items as follows:
 - a. Approval of an agreement concluding real estate negotiations as specified in GC section ~~54956.8~~ 54957.1;

The GC section is changed to be consistent with the COSM's Statement of Decision.

- b. "Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation, as set forth in GC section ~~43956.9~~ 54957.1."

The GC section 54957.1 not 43956.9 was identified as the reimbursable code section for this activity.

- c. "Approval given to its legal counsel of a settlement of pending litigation at any stage prior to or during a judicial or quasi-judicial proceeding, shall be reported as specified in GC section ~~54956.0~~ 54957.1;"

The GC section 54957.1 not 54956.0 was identified as the reimbursable code section for this activity within the COSM's adopted statement of decision.

- d. "Disposition reached as to claims discussed in closed session shall be reported as specified in Section ~~54956.95~~ GC section 54957.1;"

The GC section 54957.1 not 54956.95 was identified as the reimbursable code section for this activity within the COSM's adopted Statement of Decision.

- e. ~~"Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session as set forth in Section 54957; and"~~

This activity should be deleted as reimbursable since the COSM's Statement of Decision states the COSM determined this activity to be required under prior law.

VII. CLAIM PREPARATION AND SUBMISSION

- B. "Reimbursement for Training, Subsequent Reporting of Action Taken in Closed Session, and Providing Copies of Documents Approved or Adopted in Closed Session

List the meeting names and dates, or the dates of training. Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits."

The proposed P's & G's provide reimbursement for training and state that names and dates of training and description of activities should be provided while the test claimant has not identified what training activities are necessary for this mandate. The reasonable and necessary training reimbursable activities should be identified to provide clarification of allowable training activities.

E. Indirect Costs

"Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan."

Cities, Counties, and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an Indirect Cost Rate Proposal (ICRP), both the direct costs (as defined and described in OMB Circular A-87, Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87, Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the two following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87, Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate, which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 (Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the divisions or sections' total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate, which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage, which the total amount allowable indirect costs bears to the base selected.

Compensation for indirect costs is eligible for reimbursement. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective, and cannot be readily identified with a particular final cost objective, without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefit cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to the Office of Management and Budget (OMB) Circular A-87.

School Districts

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate, provisionally approved by the California Department of Education.

County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate, provisionally approved by the California Department of Education.

The indirect cost rate language is amended to include indirect cost reimbursement provisions for school districts and county offices with the most recent language adopted by the COSM.

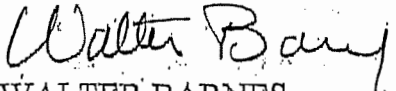
Ms. Shirley Opie

-7-

February 6, 2002

If you have any questions, please contact Ginny Brummels at (916) 324-0256.

Sincerely,

A handwritten signature in cursive script that reads "Walter Barnes".

WALTER BARNES
Chief Deputy Controller, Finance

WB:GH:glb

PROOF OF SERVICE BY MAIL

CSM - 4469

I, the undersigned, declare as follows:

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and not a party to the within action. My place of employment and business address is 3301 C Street, Suite 500, Sacramento, California 95816.

On February 6, 2002, I served the attached recommendation of the State Controller's Office by placing a true copy thereof enclosed in a sealed envelope addressed to each of the persons named below at the addresses shown and by depositing said envelopes in the United States mail at Sacramento, California, with postage thereon fully prepaid.

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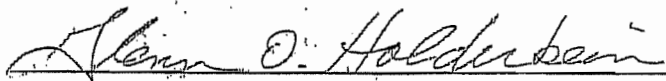
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Controller - Treasurer Department
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Ms. Vickie Wajdak
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Fresno, CA 93715-1247

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City of Newport Beach
3300 Newport Blvd., P.O. Box 1768
Newport Beach, CA 92659-1768

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 6, 2002, at Sacramento, California.



Glenn O. Holderbein

SUPPLEMENTAL DECLARATIONS
IN SUPPORT OF CLAIMANT'S
PARAMETERS AND GUIDELINES

Brown Act Reform

Chapters 1136, 1137 and 1138, Statutes of 1993

Chapter 32, Statutes of 1994

As shown from the attached declarations, the membership of boards and commissions do not remain static over time. Rather, as membership changes and memories wane, additional training of the board members is given. Various entities provide training on various schedules, depending upon the size of the entity, and the perceived need for training.

The penalties for violation of the Brown Act are onerous: the actions taken are avoidable. Because of the inherent liability which may attach to the entity, prevention by way of education is the most valuable tool.

Most of the members of various boards and commissions are not attorneys. Thus, training is imperative in order to keep these lay persons aware of the technical requirements of the Brown Act and the significance of its violation.

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FEB 13 2002

COMMISSION ON
STATE MANDATES

DECLARATION OF KATHLEEN BALES-LANGE
IN SUPPORT OF CLAIMANT'S
PARAMETERS AND GUIDELINES

Brown Act Reform
Chapters 1136, 1137 and 1138, Statutes of 1993
Chapter 32, Statutes of 1994

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STATE MANDATES

I, Kathleen Bales-Lange, declare:

I have been the Tulare County Counsel since January 6, 1997, and have been with the office since 1981.

When the original amendments to the Brown Act were passed, which form the basis of this test claim and parameters and guidelines, substantial training was conducted on the changes.

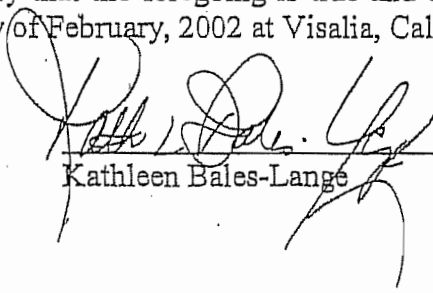
Since I have become County Counsel, our office has conducted periodic training of elected and appointed officials in the Brown Act, together with their obligations under it.

The reason for the subsequent training is that the membership of the various boards and commissions does not remain static. The membership changes as terms expire, or there are unscheduled vacancies due to resignations or incapacity. Most of the members of these boards and commissions are not attorneys, and thus do not have any background in the Brown Act.

The requirements of the Brown Act are quite technical, and the penalties for violations are quite onerous. Thus, not only do new board and commission members need to be trained on the requirements of the Brown Act, but with the passage of time, members may forget the requirements and need refresher training.

One of the Chief Deputies, Gary de Malignon, does all of the Brown Act training. He has done training not only for the Board and various other boards and commissions, but also schools, the memorial districts and cemetery districts. Additionally, follow up is done, where materials are sent to the members.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 11th day of February, 2002 at Visalia, California.


Kathleen Bales-Lange

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COMMISSION ON
STATE MANDATES

DECLARATION OF BARBARA BOOTH GRUNWALD
IN SUPPORT OF CLAIMANT'S
PARAMETERS AND GUIDELINES

Brown Act Reform

Chapters 1136, 1137 and 1138, Statutes of 1993

Chapter 32, Statutes of 1994

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I, Barbara Booth Grunwald, state:

I am a Deputy County Counsel with the County of Fresno. I have been so employed since March 4, 1991. One of my duties in connection with my employment is to provide training and opinions concerning the Brown Act at the direction of the County Counsel and Assistant County Counsel.

As previously stated in my declaration provided in support of the test claim, I studied at great length the changes in the Brown Act at the time when the test claim legislation was passed, being Chapters 1136, 1137 and 1138, Statutes of 1993, and Chapter 32, Statutes of 1994. As a result of the substantial changes, the County Counsel determined that training would be performed for the Board of Supervisors, as well as Boards and Commissions subject to the Brown Act. I was responsible for assembling the materials to be provided, and true and correct copies of same were provided in support of the test claim filing. Since the changes to the Brown Act were significant, and the ramifications of violating the Act are onerous, substantial time was expended in the preparation and review of the materials for the initial training.

The initial training was somewhat lengthy, and was presented to the Board of Supervisors in open session. The training was ultimately videotaped so that individuals in need of training, who were unable to attend the session provided to their board or commission on the Brown Act could watch it at their leisure.

The membership of various Boards and Commissions, including the Board of Supervisors, does not remain static. Individuals serve the terms for which they are elected or appointed, and other individuals may replace them. Consequently, there is occasionally the need for additional training.

The County Counsel's office has therefore continued to provide such training to the various Boards and Commissions, including the Board of Supervisors, at their request. For example, last year the Board of Supervisors requested updated training, which I conducted. The board membership had changed substantially since the original training in 1994, as there were two new board members out of five.

Similarly, a new nonprofit corporation was created in Fresno County in 1996, composed of local public entities within the County and therefore subject to the Brown Act, called the I-5 Business Development Corridor, Inc. I provided Brown Act training

to ~~this~~ ^{the} board of directors of this corporation last year, as they requested an update, particularly regarding agenda posting requirements.

Additionally, at the request of Clovis Unified School District, I did a training session for the clerk to its Board.

The training which is provided takes from one to three hours. At the last training session of the Board of Supervisors, hypotheticals were used in order to clarify issues which commonly arise.

Given the changes in composition of various boards and commissions, as well as the onerous penalties which attach if the Brown Act is violated, I will provide training to the various members of boards and commissions at their request, or at the request of their executive staff. As training is provided in open session, if there is a member who previously received the training present, that person will again receive the training. Also, I envision that additional training may be needed in the future should the Brown Act be amended again in a significant manner.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 30th day of January, 2002 at Fresno, California.

Barbara Booth Gruhwald
Barbara Booth Gruhwald

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DECLARATION OF THOMAS J. RIGGS
IN SUPPORT OF CLAIMANT'S
PARAMETERS AND GUIDELINES
Brown Act Reform
Chapters 1136, 1137 and 1138, Statutes of 1993
Chapter 32, Statutes of 1994

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STATE MANDATES

I, Thomas Riggs, declare:

That I am a shareholder with the firm of LOZANO SMITH, and have been with the firm for a period of 13 years. Prior to that time, I was with the Fresno County Counsel's Office. I have been an attorney for over 27 years, and have concentrated in municipal law.


The firm of Lozano Smith represents various cities, school districts and local governmental agencies, and its practice is that of municipal, education, and local government law.

The composition of various city councils, boards and commissions does not remain static, but rather changes due to the expiration of terms, new elections, as well as scheduled and unscheduled vacancies.

Our firm has an ongoing Brown Act workbook which is updated on an annual basis, and is distributed to our clients annually. For several of our clients, we do an annual in service training in the Brown Act at an open session of the city council meeting or board. On occasion, and on request, we will do a special workshop or in-service training on the Brown Act for a variety of clients, and their boards or commissions.

The reason for the annual program on the Brown Act is that the composition of boards and commissions changes continually. The ramifications of a violation of the Brown Act are onerous, and thus, it is important that our clients be aware of the technical requirements of the Brown Act.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed this 30th day of January, 2002 at Fresno, California.


Thomas J. Riggs

DECLARATION OF STEPHEN SHANE STARK
IN SUPPORT OF CLAIMANT'S
PARAMETERS AND GUIDELINES

Brown Act Reform

Chapters 1136, 1137 and 1138, Statutes of 1993
Chapter 32, Statutes of 1994

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FEB 13 2002
COMMISSION ON
STATE MANDATES

I, Stephen Shane Stark, declare:

I am the County Counsel for Santa Barbara County, and have been such since May of 1994. Prior to that time, I was the Acting County Counsel.

After the passage of the amendments to the Brown Act, during the time when I was either the County Counsel or the Acting County Counsel, I did an initial training for members of the Board of Supervisors and various boards and commissions. Because of the significant changes to the Brown Act, our office briefed the Board of Supervisors and prepared a memo detailing the requirements of the amended Act. The Board directed that we hold a training session to brief the Board members, county staff, and members of the numerous county boards and commissions on the new requirements of the Brown Act. Given the geography of Santa Barbara County, one session was held in Santa Barbara, and another one was held in Santa Maria. Training materials were prepared, including written summaries and slides. Handouts were distributed at both training sessions.

Santa Barbara County presently has about 80 commissions and committees subject to the Brown Act. The number has grown slowly but steadily since 1994. The composition of the boards and commissions are not static. Because of both scheduled and unscheduled vacancies, the membership of the various boards changes. The frequent turnover requires additional training, as does the creation of new boards and commissions.

Approximately 3 or 4 years after the initial training, it became apparent that due to the change in composition of the various boards and commissions, and requests from board and commission members, additional training was necessary. Accordingly, we instituted a training for board and commission members that has been given every year since 1998. This training consists of the Brown Act, Public Records Act, general public ethics, conflict of interest and how to be a board member or commissioner. Training materials are provided on each of the subject matters. The manual is approximately 200 pages in length, and is continually reviewed and updated for changes in the law. The text of the Brown Act is included. The training is approximately three hours in duration, and one third of the time, or one hour, is devoted to the Brown Act. There is also time for questions and answers on its applicability in Santa Barbara County, and occasionally a memorandum is issued after the meeting based upon questions which are posed. This subsequent training is provided in Santa Barbara, and is teleconferenced to Santa Maria. (In alternate years, the presenters are in Santa Maria, and the training is teleconferenced to Santa Barbara.)

Additionally, each year since 1995 our office has separately provided individual training to three or four of the boards or commissions in Santa Barbara County. This training is approximately one-half hour to one hour on the Brown Act, and also includes times for questions and answers. Sometimes questions arise pertaining to conflict of interest, but most of the presentation and questions concern the Brown Act.

I also teach a four-hour program at the County's Employee University called Introduction to Public Law. The Employee University is open to all county employees, and to employees of some other government entities as well. Participants receive credit from the local community colleges. The program is similar to the Board and Commission Member training; it is designed for new lawyers, paralegals, and county employees who work with the law. It includes a teaching module related to the Brown Act.

The structured training is separate and apart from responding to questions and providing opinions on the applicability of the Brown Act to various situations as they occur.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 11th day of February, 2002, at Santa Barbara, California.


Stephen Shane Stark